



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

1200 New Jersey Ave, SE
Washington, DC 20590

February 7, 2024

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Mail Stop H-144 (Annex J)
Washington, DC 20580

RE: Unfair or Deceptive Fees NPRM, R207011

Dear Chair Lina Khan:

The Federal Trade Commission (FTC) has requested comments on its proposed Rule on Unfair or Deceptive Fees, announced at 88 FR 77420. The Federal Motor Carrier Safety Administration (FMCSA), an administration within the Department of Transportation that regulates commercial motor vehicles (CMVs), submits this comment in response. FMCSA wishes to offer information on the predatory towing fee practices that impact CMV owners and operators of large trucks and passenger buses and offer support for a final rule with strong protections against junk fees.

Background on Predatory Towing

The proposed regulation may significantly benefit FMCSA's regulated community, specifically as it relates to the predatory towing practices that have a substantial financial impact on CMV owners and operators. There are two contexts in which predatory towing of CMVs may take place: consensual or nonconsensual. The consensual context usually occurs following a vehicle accident or malfunction where the CMV owner or operator has requested towing service and given permission for the towing company to tow the vehicle. The nonconsensual context most often occurs when an unlawfully parked vehicle is removed from public or private property at the request of a law enforcement officer or a property owner and the CMV owner or operator has not given permission for the towing.

Once towed, CMV owners and operators are in a very vulnerable position and highly susceptible to predation. Predatory towing companies can and do use their possession of the vehicle as leverage to price gouge and otherwise prey upon CMV owners and operators who are in no position to push back. The nature of the business means that when CMV owners' and operators' vehicles are towed, they are typically not dealing with companies with which they have established business relationships. Many CMV owners and operators drive long distances and travel interstate, and, accordingly, may find their vehicles in need of towing without a

familiar towing company nearby. State laws governing towing compound the problems because they greatly vary and cause confusion for CMV owners and operators as to what fees are permitted or even mandated. These circumstances combine to create fertile ground for predatory conduct. FMCSA submits for the record the enclosed report, *Causes and Countermeasures of Predatory Towing*, commissioned by the American Transportation Research Institute, dated November 2023, which provides in depth details about the financial effects of predatory towing on the trucking industry.

Predatory Towing Fee Concerns

While there are a wide range of problematic practices associated with predatory towing, a number of them center on the mandatory or otherwise unavoidable fees that towing companies charge. As described in greater detail below, FMCSA is concerned that predatory towing companies are hiding fees until the tow is completed, charging for unnecessary or worthless services, and imposing an excessive number of fees for excessive amounts. These fee practices match many of the same unfair or deceptive fact patterns that are described in the FTC's NPRM.

In the consensual towing context, FMCSA is concerned that some towing companies charge hidden fees that can significantly increase the cost of the tow. In essence, towing companies quote one price to the CMV owner or operator at the time permission for the tow is granted, but then impose additional, mandatory fees and charges on the back end after towing is complete. Because the amount or even the existence of these back-end fees is not disclosed as part of the upfront price, these are not charges to which the CMV owners and operators have affirmatively consented. Hiding these fees makes them impossible for CMV owners and operators to consider at the time they agree to the tow. By the time the fees are disclosed, the owners or operators have already received the service for which they are being charged. At that point it is too late to select different company, negotiate to lower or eliminate the charges, or decline the service.

Towing companies may claim they are unable to calculate the fees up front when quoting the price because they are based on variable factors such as weight or distance towed. However, FMCSA is concerned that towing companies may be charging variable fees for services with low fixed costs or costs that are not affected by variable factors. Moreover, to the extent that these variable factors change the legitimate cost of the towing service, there is no clear reason why they must be assessed as separate charges rather than being included as part of the upfront pricing structure. For example, towing can include per-mile fee rates or daily storage fees.

FMCSA is also concerned that many of the fees charged in both the consensual and nonconsensual towing contexts are unnecessary. These fees are typically mandatory and/or hidden until after the tow is complete and labeled on invoices under vague, misleading, or catch-all terms such as "administrative fee." Upon further inquiry, the charges often prove to be for services that have no value, cost nothing extra to provide, or should have been included as an integral part of the tow price. For example, towing companies often charge "equipment fees" for using equipment that they already own and would be expected use routinely to provide the towing service. These are not services that CMV owners and operators would likely

procure separately or charges that they would affirmatively agree to if they had a choice. However, because use of the “extra” equipment or services are essential to the tow, the fees are impossible to avoid. To the extent that any unnecessary fees are mandatory, consumers cannot reasonably avoid them.

Finally, FMCSA is concerned that the towing fees imposed on CMV owners and operators are excessive, both in the number of fees imposed and the amount charged for each. This problem is prevalent throughout towing but especially acute in the nonconsensual towing context where CMV owners and operators are captive customers with no ability to shop for alternative towing service, negotiate prices, or decline the service. FMCSA has observed that predatory towing companies take advantage of these CMV operators’ lack of choice and agency by imposing a large number of mandatory, unduly high fees and charges. These are charges that CMV owners and operators have not affirmatively consented to and cannot avoid.

Protections Against Predatory Towing Fees

FMCSA believes that these predatory towing fee practices fall within the purview of FTC’s proposed regulation on unfair or deceptive fees and offers the following support and suggestions for consideration.

First, FMCSA supports the FTC’s proposed prohibitions against hidden and misleading fees. To enhance market understanding of these provisions, FMCSA suggests clarifying in the final rule that companies are not permitted to charge or collect fees that are hidden, misleading, or otherwise not appropriately disclosed upfront and that each illegal fee will be considered a separate violation.

FMCSA also supports the FTC’s proposed definition of “total price” as “the maximum total of all fees or charges a consumer must pay for a good or service and any mandatory Ancillary Good or Service.” FMCSA suggests that the final rule further clarify what fees must be included in the total price by adding a definition for the term “mandatory ancillary fee,” that includes any ancillary fee or charge required to purchase or receive a good or service essential to the primary good or service being purchased, which a consumer cannot reasonably avoid paying.

FMCSA further suggests that the final rule clarify that companies are prohibited from charging any mandatory ancillary fee that is not included or disclosed in the total upfront price, and from charging variable mandatory ancillary fees if the full amount of such variable fees cannot be calculated in the upfront price. FMCSA also encourages the FTC to consider adding a provision that prohibits companies from charging any fee for an ancillary good or service that has no value, costs nothing extra to provide, or that reasonably would be assumed to be included in the upfront price of the good or service.

In addition, FMCSA encourages the FTC to consider prohibiting or imposing restrictions on excessive fee practices. These practices include charging an excessive number of fees, charging excessive amounts for a fee, or charging variable fees for fixed costs. The provision on excessive fees could focus on consumers who have little to no ability to avoid, negotiate,

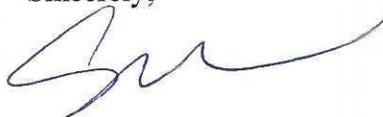
decline, anticipate, or limit the number or cost of the fees, or consumers who are vulnerable, in distress, or otherwise limited in choice by their circumstances. In determining whether the number or amounts of fees are “excessive,” the FTC may also consider disparities between fees charged to such captive or vulnerable consumers and fees charged to other consumers.

Finally, as noted above, CMV operators often drive in multiple States, and State laws governing towing practices vary greatly. FMCSA requests that the FTC provide guidance on how proposed 16 CFR 464.4(a) and (b) would affect different State and local laws governing fees in the towing industry, either in the final rule or through subsequent interpretive guidance.

If FMCSA can be of further assistance, please contact FMCSA Chief Counsel, Brian Stansbury, at Brian.Stansbury@dot.gov.

Thank you for your consideration of FMCSA’s comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sue Lawless', written in a cursive style.

Sue Lawless
Acting Deputy Administrator

Enclosure: Leslie, Alex and Alexa Pupillo. (November 2023). *Causes and Countermeasures of Predatory Towing*. American Transportation Research Institute.

Causes and Countermeasures of Predatory Towing

November 2023



RELEASE	ISSUE TIME	EXTRA PERSON	STORAGE FEE	AMOUNT
Rotator @ 37 cents/lb				\$23,600.00
Off road charge @ 6 cents/lb				\$3,900.00
Inconvenient Weather @ 8 cents/lb				\$6,400.00
Traffic control (Personnel)				\$4,600.00
Labor @ 3 cents/hour				\$4,000.00
Storage				\$0.00
WRECKER CHARGE				
EXTRA PERSON				
SPECIAL EQ				
LABOR CHARGE				
STORAGE				
ENVIRONMENTAL				

TOWING INVOICE

Prepared by the American Transportation Research Institute

Causes and Countermeasures of Predatory Towing

November 2023

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LIST OF ACRONYMS

ATRI	American Transportation Research Institute
CMV	Commercial Motor Vehicle
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FOIA	Freedom of Information Act
GPS	Global Positioning System
GVWR	Gross Vehicle Weight Rating
HD	Heavy-Duty
MCMIS	Motor Carrier Management Information System
OO	Owner-Operators
OIDA	Owner-Operator Independent Driver Association
RAC	Research Advisory Committee
RISC	Rapid Incident Scene Clearance
ROI	Return-on-Investment
T&R	Towing and Recovery
TIM	Traffic Incident Management
TRAA	Towing and Recovery Association of America
TRIP	Towing and Recovery Incentive Program

INTRODUCTION

The towing and recovery (T&R) industry is an essential partner to the trucking industry by supporting stable and reliable supply chains. Commercial motor vehicle (CMV) breakdowns and crashes can disrupt manufacturing lines, hinder retail supplies and impede critical medical product deliveries – among many other consequences. Accordingly, a well-trained and responsive T&R industry is a necessity for ensuring freight mobility.

However, conflicts do arise between the two industries, resulting from conflicting priorities and objectives. For instance, motor carriers are rarely able to choose which T&R company to utilize during police-initiated, post-crash tows. Consequently, carriers are often unable to compare rates, investigate crash sites, or approve the equipment and techniques deployed in a recovery. T&R companies also face challenges, including financing expensive towing equipment, covering large urban and rural geographies and the relative infrequency of heavy-duty recoveries. These challenges and conflicting objectives can create opportunities for miscommunication, disagreement, and too often, predatory practices.

Predatory towing is, generally, any incident in which a T&R company egregiously overcharges, illegally seizes assets, damages assets by use of improper equipment, or illegitimately withholds release of a truck, trailer, and/or cargo. Overcharges can occur in two primary ways, through either excessive costs (whether hourly, per-mile, or per-pound) or charges for unnecessary additional equipment. If there is insurance that covers the T&R services, insurers typically pay a large portion of these excessive costs or the costs of fighting them, which in turn is passed on to motor carriers in the form of higher premiums. Even when insurance covers T&R charges, excessive invoices often exceed the applicable limits, leaving motor carriers and/or drivers responsible for difference.

Predatory towing has received renewed attention after a series of recent incidents garnered media coverage. In 2020 a motor carrier received a \$202,000 invoice in Virginia for recovering and towing a truck involved in a single vehicle incident.¹ In Chicago, unsolicited and illegal tows have been on the rise over the past five years.² Not all predatory incidents have high costs or illegal activity; in 2023, a \$6,000 bill for a 16-mile tow went viral as an instance of an excessive rate for minor service.³ Furthermore, when motor carriers or insurers contest a potentially predatory incident, T&R companies hold equipment and cargo until payment is finalized. This means that even resolved predatory tows generate negative impacts to supply chains and especially to small fleets or owner-operators (OOs). In response, groups in multiple states have been pushing for more regulation over the T&R industry. These efforts and the current status of statewide regulation will be discussed in detail in the State Regulations section of this report.

¹ Eric Miller, "Officials Call \$202,000 Towing Bill a Textbook Example of a Scam," *Transport Topics* (March 11, 2021), <https://www.ttnews.com/articles/officials-call-202000-towing-bill-textbook-example-scam>.

² Lisa Parker and Tom Jones, "Crash and Burned: Chicago's Predatory Tow Reputation Among The Nation's Truck Drivers," *NBC Chicago* (May 18, 2022), <https://www.nbcchicago.com/consumer/crash-and-burned-chicagos-predatory-tow-reputation-among-the-nations-truck-drivers/2835845/>.

³ Alex Lockie, "\$6,000 for 16 miles? Viral video sparks outrage over predatory towing," *Overdrive* (May 26, 2023), <https://www.overdriveonline.com/channel-19/article/15448198/video-sparks-outrage-over-predatory-towing>.

In 2022, the American Transportation Research Institute (ATRI) Research Advisory Committee (RAC) voted to prioritize research on predatory towing, including its causes, frequency and strategies for mitigation.⁴

ATRI's research found that predatory billing was the most common form of predatory towing, with excessive rates experienced by 82.7 percent of motor carriers and unwarranted extra charges experienced by 81.8 percent of motor carriers, respectively. Additional common forms of predatory towing include improper vehicle seizure, vehicle access or release issues, and withheld cargo. These issues are exacerbated by inconsistent invoice itemization practices in the T&R industry and a patchwork of local and state towing regulations that are difficult to navigate.

This report found that 29.8 percent of crash-related tows included some form of predatory billing, based on an independent analysis of motor carriers' complete records of original towing invoices from 2021, 2022 and 2023.

CMV recovery immediately following a crash is a complex, time-sensitive and skill-dependent activity. The majority of towing, trucking, and insurance companies work together successfully to the satisfaction of all parties. This research is focused on those T&R incidents where unethical business practices occur, with the goal of improving the relationship between these industries.

BACKGROUND

Types of Heavy-Duty Towing and Equipment

Where towing is regulated at the state-level, definitions of "heavy-duty" towing vary with different weight cut-offs for towing classes. Some states define weight class not by the Gross Vehicle Weight Rating (GVWR) of the vehicle being towed but by the weight of the tow vehicle itself. For the purposes of this report, heavy-duty towing is defined as any tow service performed either on or by a vehicle of 26,000 lbs. GVWR or more.

There are two major categories of heavy-duty towing: consensual and nonconsensual.

1. Consensual towing occurs when a vehicle owner, or any other person who has legitimate ownership or control over the vehicle, requests a T&R company's services of their own volition. This may occur after an incident or in response to a mechanical breakdown. Consensual tows are less likely to be predatory because motor carriers are able to compare and agree upon reasonable rates with the T&R company of their choice prior to authorizing a tow.
2. Nonconsensual towing can be broken down into two categories: police-initiated towing of a crashed or disabled vehicle and impound towing.
 - Police-initiated crash/disabled vehicle towing occurs when a truck has been involved in a crash or is disabled and interfering with traffic flow or public safety; police take control of the scene and call towing services for the vehicle. In multiple states

⁴ ATRI's Research Advisory Committee RAC is comprised of industry stakeholders representing motor carriers, trucking industry suppliers, federal government agencies, professional truck drivers, law enforcement, and academia. The RAC is charged with annually recommending a research agenda for the Institute.

vehicle owners may be allowed to request or call a preferred towing company and still have the tow be considered legally nonconsensual. In other states such as Colorado and Maryland, if the vehicle owner has the opportunity to call a towing service of their choice, the tow is no longer considered nonconsensual, and the vehicle owner loses any protections that apply to nonconsensual tows. This issue will be explored further under the State Regulations section.

- Impound towing occurs when an illegally parked or unauthorized vehicle is removed from privately or publicly owned property without the prior consent or authorization of the vehicle owner. A public property impound tow may be police-initiated.

In some states, the exact definition of consensual and nonconsensual towing may be subject to additional qualifications. For example, a T&R company may seek to have a truck driver sign a consent form after a police-initiated, crash-related tow; this is significant because towing regulations in some states only apply to nonconsensual tows.⁵

A simple heavy-duty truck crash or breakdown may only require towing from the crash site. When a vehicle goes far off the road, rolls, incurs significant damage, spills cargo onto the road, or cannot simply be attached to a tow truck for any other reason, a recovery may be necessary.



The towing and recovery of heavy-duty vehicles like Class 8 tractor-trailers requires specialized heavy-duty equipment that is not required for the day-to-day operations of most T&R companies. The most important of these is a heavy-duty wrecker. Wreckers are equipped with a boom and a wheel lift that can maneuver heavy-duty vehicles as well as tow them. Most wreckers have a capacity between 25 and 50 tons (50,000 to 100,000 lbs.).

A rotator is much like a wrecker, with the crucial addition of a rotating arm in the place of a boom. Most models have a capacity between 50 and 75 tons and as many as five axles. A rotator is critical for some difficult recoveries; often completing a job that might otherwise require multiple wreckers or cause unavoidable damage to the truck-tractor, trailer, or cargo. In some cases, deploying a rotator may save substantial time and cost by reducing the number of assets required for a recovery.



⁵ SJ Munoz, "OOIDA's Matousek testifies on Maryland towing reform," *Land Line* (March 1, 2022), <https://landline.media/ooidas-matousek-testifies-on-maryland-towing-reform/>.

In addition to this specialized equipment, heavy-duty towing often requires that T&R companies maintain a volume of other asset types. These include lowboy or landoll trailers for transporting damaged truck-tractors, trailers, or cargo as well as more typical rollback tow trucks, which can assist with winching and other support tasks at a heavy-duty crash site. Heavy-duty crashes may require additional work to restore roadways, which may entail extra workers or materials to safely collect and dispose of any hazardous materials or cargo.

The T&R Industry

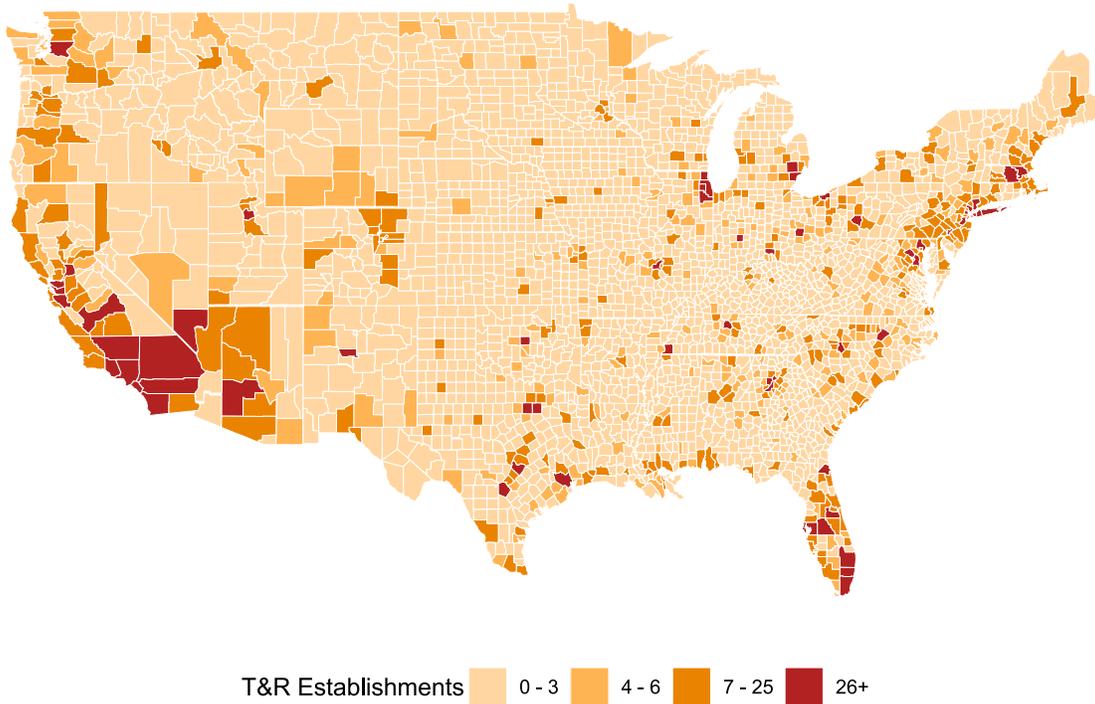
The heavy-duty T&R industry is shaped by a unique set of market conditions that in turn impact businesses like trucking. T&R companies are predominantly local and small, and they require expensive equipment as well as skilled operators ready to deploy on short notice.⁶ Towing services are highly time- and location-sensitive after a crash, and therefore their rates are partly shielded from traditional supply and demand marketplace influences.

It is important that T&R services are available at every conceivable location in which trucks operate, yet many parts of the U.S. do not see high traffic or crash volumes. As such, in many areas there is comparatively little competition in the T&R industry. According to Bureau of Labor Statistics (BLS) establishments data, nearly three-quarters (74%) of U.S. counties had three or fewer T&R companies in 2022 (Figure 1).⁷ This data does not include independent proprietors or companies whose primary business is not towing (such as a body shop), but conversely, it also includes companies that likely are not equipped for heavy-duty recoveries. Even with these caveats, the data suggests that many parts of the country do not experience strong competitive pressures that might lower towing rates. It also demonstrates why some recoveries require calling a T&R company that is based far from the crash site.

⁶ Bureau of Labor Statistics, "Quarterly Census of Employment and Wages" (Q4 2022).

⁷ Bureau of Labor Statistics, "Quarterly Census of Employment and Wages" (Q4 2022), https://data.bls.gov/cew/apps/table_maker/v4/table_maker.htm#type=1&year=2022&qtr=4&own=5&ind=488410&sup_p=0.

Figure 1: Number of Motor Vehicle Towing Establishments by County



Wreckers and rotators have experienced the same sharp price increases as is seen among traditional truck-tractors. Some wrecker dealers recently reported that prices for new models have increased by over 25 percent in recent years.⁸ Based on sales listings from 2022 and 2023, used 25-ton wreckers with over a hundred thousand miles can easily sell for over \$150,000.⁹

Exacerbating the return-on-investment (ROI) pressures for these vehicles is their relatively low utilization rate. Though heavy-duty wreckers can be used for other towing and recovery tasks with suboptimal efficiency, they may only be fully utilized for heavy-duty tows or recoveries a few times each year according to T&R companies interviewed by ATRI. In some states, initiatives prioritizing quick clearance of roadways (described below) may require T&R companies to purchase more assets than economically viable in their area of operation.

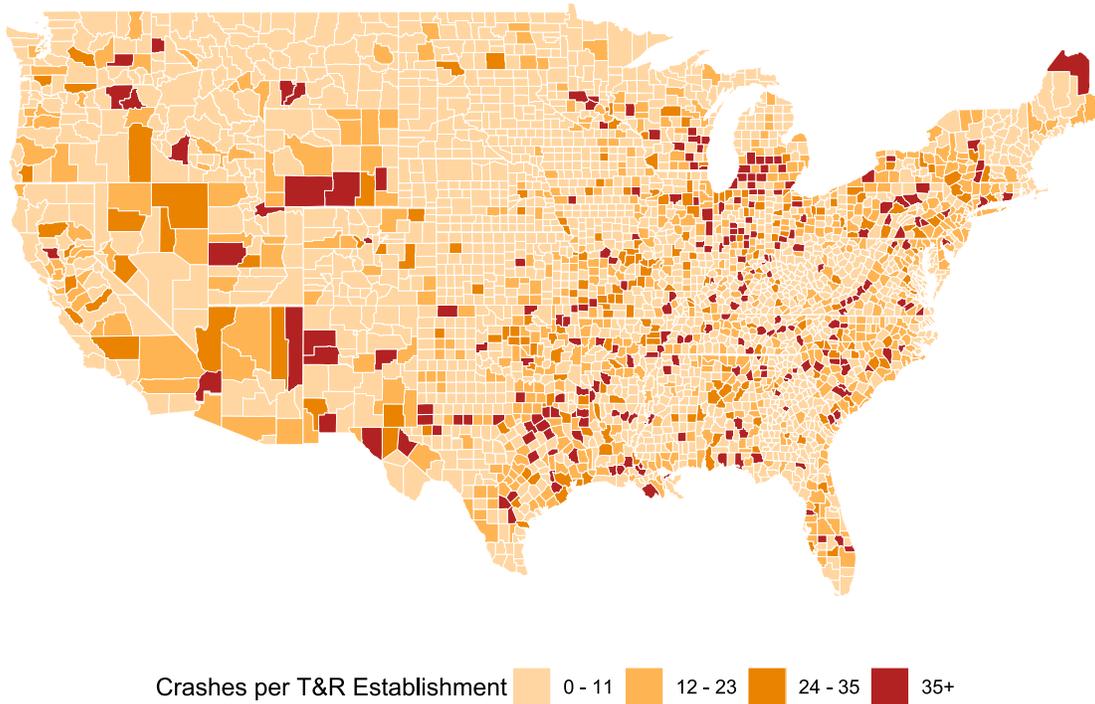
Crash data synthesized with BLS establishments data corroborates the interview data. The Federal Motor Carrier Safety Administration (FMCSA) maintains extensive data on all large truck and bus crashes in the U.S. as part of the Motor Carrier Management Information System (MCMIS), which distinguishes towaway versus non-towaway crashes at the county level.¹⁰ Figure 2 shows the number of large truck towaway crashes per establishment by county.

⁸ Alex Lockie, "Tow company defends 'predatory' practices," *Overdrive* (June 23, 2023), <https://www.overdriveonline.com/business/article/15540918/towings-predatory-pricing-a-tow-company-owners-perspective>.

⁹ This review included listings from Ritchie Bros., Commercial Truck Trader, and Truck Paper.

¹⁰ Federal Motor Carrier Safety Administration, Motor Carrier Management Information System Crash File (2021), https://ask.fmcsa.dot.gov/app/mcmiscatalog/d_crash1.

Figure 2: Large Truck Towaway Crashes per Towing Establishment by County



In 2021, 45 percent of T&R companies operated in counties where there were fewer than 12 annual truck-trailer towaway crashes per T&R company on average – not even one crash per T&R company per month (Figure 2). The relative infrequency with which heavy-duty towing equipment is used in many parts of the country places pricing pressure on towing rates so that T&R companies can recover the necessary costs of doing business.

Predatory Towing

While large towing invoices like those cited in the Introduction make headlines, many predatory practices are not defined by an extraordinary bill; they may involve inflated rates for minor work, release or access issues, or incidental damages to the trucking assets. Regulations differ between states or even municipalities, rates and charges can vary widely, and T&R companies typically hold towed equipment until an invoice is paid.¹¹ For their part, T&R companies assert that many of these variabilities and uncertainties are due to the unpredictable nature of their work.¹²

Several states and municipalities have recently pursued new laws and regulations pertaining to towing, including Colorado and Maryland, though there is considerable disagreement surrounding how such regulations should function.¹³ Some initiatives focus on regulating exact

¹¹ Grace Brombach, "Getting Off the Hook of a Predatory Tow," U.S. Public Interest Research Group (May 2021).

¹² Alex Lockie, "Tow company defends 'predatory' practices," *Overdrive* (June 23, 2023), <https://www.overdriveonline.com/business/article/15540918/towings-predatory-pricing-a-tow-company-owners-perspective>.

¹³ Marissa Armas, "New Colorado towing law gives more rights to citizens," CBS Colorado (August 12, 2022), <https://www.cbsnews.com/colorado/news/new-colorado-towing-law-rights-citizens/>.

rates for different vehicle classes. Other initiatives focus on setting protocols for when or how different types of towing can occur. A third area of focus is creating procedures for complaints or reparations after a predatory towing incident. T&R companies, even when acknowledging a need for reform, have expressed concerns with the process for determining rate limits and enforcing other protocols.¹⁴

Recent trucking industry surveys have highlighted excessive rates and law enforcement referrals as two leading issues.¹⁵ Yet aside from industry anecdotes, the degree and frequency of predatory towing remains largely unknown due to a lack of empirical data.

¹⁴ Noël Fletcher, "Bill to End Predatory Towing Goes Before Maryland Governor," *Transport Topics* (April 26, 2022), <https://www.ttnews.com/articles/bill-end-predatory-towing-goes-maryland-governor>.

¹⁵ American Trucking Associations National Accounting & Finance Council, "Towing Survey Results" (April 2020); American Trucking Associations, "The American Trucking Association, American Property Casualty Insurance Association, & the Coalition Against Insurance Fraud join forces to tackle towing fraud across America" (April 5, 2021), <https://www.trucking.org/news-insights/major-trade-associations-announce-new-legislative-partnership-stop-towing-staged>.

RESEARCH METHODOLOGY

The first task of this research was to assemble a state-by-state compendium of towing regulations to analyze the current legal environment surrounding the issue. Particular focus was given to rate regulations, regulations to prevent predatory practices, and the establishment of official channels for complaints or reparations. The full compendium, Appendix A, can be found [online here](#); the body of this report includes summaries of key areas of regulation.

The second task was a motor carrier survey that identified the scope of predatory towing issues in the trucking industry. This survey solicited information on the type and location of predatory practices encountered by motor carriers, as well as their perspective on what counts as predatory (Appendix B).

The survey, distributed through ATRI's contact database as well as numerous industry news outlets, generated a convenience sample of 350 motor carrier respondents. Among the respondents, 52 percent of trucks were in the truckload sector, 11 percent in the less-than-truckload sector, and the remaining 37 percent in the specialized sector. Compared to the industry as a whole, the less-than-truckload sector was underrepresented while the specialized sector was overrepresented, based on BLS employment data.¹⁶

Survey respondents identified equipment rates and additional expenses as the two areas where predatory practices had the greatest impact on the trucking industry. As a result, a second data collection activity focused on obtaining complete invoice records. Twenty motor carriers, ranging in size from 20 to 1,000 trucks, contributed T&R invoices from *all* of their towaway crash-related incidents in 2021 and 2022. The Owner-Operator Independent Driver Association (OOIDA) contributed invoices from *all* of their members' towaway crash-related incidents from January 2022 to September 2023. After quality control, this dataset contained 490 T&R invoices.

Invoices were transcribed, standardized and quantified to generate relevant statistics and thresholds of potentially predatory rates or fees as well as the frequency of billing-based predatory towing. The participating carriers submitted comprehensive data, thus ensuring its reliability.

In order to capture all stakeholder issues and perspectives, ATRI interviewed multiple T&R companies to better understand towing standards, business practices, equipment utilization, and perspectives on how to strengthen relationships between the two industries. The outline for these interviews can be found in Appendix C.

Insurance plays a key intermediary role in business conducted between T&R companies and trucking companies. To better understand the role that insurance plays in towing outcomes, an additional survey was sent to commercial auto insurers, using ATRI's industry database (Appendix D).

Finally, it is crucial for motor carriers and their legal representatives to understand strategies for avoiding and addressing any complications with T&R companies after a police-initiated or nonconsensual tow. As such, interviews were conducted with legal experts experienced in

¹⁶ U.S. Bureau of Labor Statistics, "Quarterly Census of Employment and Wages" (Q3 2022), <https://www.bls.gov/cew/>. SOC codes used were as follows: 484121 for truckload carriers, 484122 for less-than-truckload carriers, and 484230 for other/specialized carriers.

predatory towing, and their recommendations are included as a Q&A in the Strategies and Perspectives from Legal Experts section.

FINDINGS

Types of Predatory Practices Identified

As previously noted, predatory towing can take multiple forms. Surveyed motor carriers were asked to identify which of eight primary types of predatory towing they had experienced and to rank them based on their impact on operations. Predatory practices are listed in rank order from most to least impactful, with the percentage of carriers that experienced each issue at some point included in parentheses. In general, the most negatively impactful predatory practices were also experienced by the most carriers.

1. Excessive Hourly or Per-Pound Rates (82.7%)

Excessive rates for equipment and labor were ranked as the most encountered and negatively impactful form of predatory towing. Rates are either set on an hourly or per-pound basis, with hourly rates the much more common practice.

Appropriate and reasonable rates depend on a variety of factors. For equipment, these may include asset type, tonnage capacity, age or condition, location, and frequency of use. For labor rates, factors may include experience, additional certification or training, and location. Considerable rate variation based on these points is to be expected, and for this reason it can be difficult to determine when a rate is excessive.

This is especially true when T&R companies use a less common billing practice, such as per-pound rates rather than hourly rates. Just 1.6 percent of analyzed invoices employed per-pound billing, yet per-pound rates can easily become predatory when not set conservatively because many loaded tractor-trailers weigh 80,000 lbs. In invoices analyzed by ATRI for example, a non-hazmat rollover recovery utilizing two wreckers and two additional workers – with no spilled cargo, no significant damage to the tractor or trailer, and no storage fees – can add up to a rate of 53 cents per pound. For a typical 80,000 lbs. tractor-trailer, this rate would amount to a total bill over \$40,000.

2. Unwarranted Additional Equipment or Labor Charges (81.8%)

Charges for unwarranted equipment or labor can occur in several ways. They may be caused by over-deployment. This can occur when too many, unused, or heavier-than-necessary assets are sent to a crash site whether 1) intentionally on the part of T&R companies, 2) due to regulatory requirements, or 3) as a result of inaccurate information from first responders. Some T&R companies mitigate this problem by charging a lower standby rate for underutilized assets or labor.

While some causes of additional charges are legitimate, many are not. Unwarranted charges may take the form of redundant charges for a single asset, such as billing for a wrecker's specific actions at a crash site in addition to a full hourly rate for the same piece of equipment. Another common additional charge is when a T&R company bills more hours for equipment or labor than what was actually worked. This form of predatory towing can be especially difficult to identify or prove because it can be obscured by the unique conditions of any given crash site. Finally, miscellaneous charges for minor supplementary tools – which may include anything from two-way radios to work gloves – can quickly lead to inflated invoices.

3. Excessive Daily Storage Rate (77.7%)

Excessive storage charges, typically prorated on a daily basis, are a major concern for motor carriers because they can accumulate rapidly if an invoice is contested. The invoices analyzed in this research had a median storage rate of \$120 per day, as shown in the Predatory Billing section. Even at this median rate, a week of storage is a substantial expense. Some T&R companies have additional charges for cargo inside a carrier's trailer even when that cargo is not climate controlled.

4. Vehicle Release Delays or Access Issues (71.7%)

Vehicle release delays primarily result from delays in payment. These delays may be due to contested predatory invoices or incomplete insurance coverage, but they may also arise from procedural delays, such as denial of access by T&R companies, restricted payment methods, or insurance adjuster turnaround time. The more parties involved in a crash – additional insurers, separate truck/trailer owners, etc. – the greater potential for delay. Delays are particularly detrimental to small fleets and OOs, who lose a significant portion or their sole source of revenue as long as their truck is incapacitated. Even short additional delays can impede carriers' ability to fulfill shipper contracts.

5. Cargo Release Delays (61.6%)

Motor carriers argue that T&R companies should release their shippers' cargo immediately even while contesting an invoice when truck-tractors and trailers are held. Many T&R companies agree on this point. Some T&R companies, however, hold cargo as a bargaining tool when invoices are contested. This outcome negatively impacts the relationship between motor carriers and shippers. Currently only eight states have legislation that expressly outlaws the holding of cargo (Table 3).

6. Vehicle Seizure without Cause (55.7%)

Over half of motor carrier respondents attested to incidents in which a truck-tractor was seized without proper cause. Improper seizure or seizure without cause may occur when a tow operator arrives at the scene of a crash or mechanical breakdown unsolicited – without being called by either law enforcement or the motor carrier. It may also occur when a tow operator impounds a truck that was parked on private property without the authorization of the property owner, which is required in 18 states (Table 3).

7. Tow Operators Misreporting Nonconsensual Tows as Consensual (53.5%)

The classification of consensual versus nonconsensual towing can impact how a tow is billed and whether the tow is subject to state or municipal regulations – many of which cover only nonconsensual tows. By reporting the circumstances of a tow as consensual rather than nonconsensual or by pressuring a truck driver to sign a consent form, a T&R company may attempt to avoid regulations or contestation of the invoice.

8. Damage Due to Use of Improper Towing Equipment (59.2%)

Depending on the nature of a crash, a recovery may not be possible without causing some additional, unavoidable damage. Yet the use of improper towing equipment or recovery techniques can cause unnecessary damage to truck-tractors, trailers or cargo. This may be the result of inadequate training, temporary unavailability of the required assets, or a T&R company that joined a rotation list without possessing the necessary equipment.

Several of these predatory practices have additional underlying causes. First and foremost, many difficulties encountered by motor carriers stem from the inability to make their own choice of T&R company in a nonconsensual tow. This problem chiefly occurs during a private property impound tow or after a crash, when police prioritize quickly clearing roadways and the surrounding area of any obstructions or potential hazards. Quick clearance is one of the Federal Highway Administration's (FHWA's) Traffic Incident Management (TIM) best practices.¹⁷ Several state initiatives, such as Georgia's Towing and Recovery Incentive Program (TRIP) and Florida's Rapid Incident Scene Clearance (RISC), provide monetary incentive to T&R companies for quick clearance.¹⁸ In emphasizing speed to such a degree, however, these initiatives can also limit motor carrier choice or lead to over-deployment.

Rotation lists themselves, utilized in most police-initiated tows, can create issues for motor carriers. In some jurisdictions, there is no clear or consistent standard for admitting T&R companies to rotation lists, and some jurisdictions lack clear, consistent or adequate penalties for T&R companies that are subject to repeated consumer complaints. T&R companies interviewed by ATRI raised this issue as well, since the inclusion of disreputable companies on rotation lists both hurts T&R industry image and takes business from reputable companies.

Motor carrier respondents were only able to use a T&R company of their choice in a median of 10 percent of towaway crashes, and 36 percent of carriers responded that they never have the opportunity to select a T&R company after an incident.

Another contributor to predatory towing is the fact that billing practices in the industry vary widely. One in four crash-related invoices analyzed by ATRI were not itemized.¹⁹ This creates additional conflict between the trucking and towing industries because un-itemized invoices can provide cover for inflated pricing.

T&R companies are not always at fault for the issues listed above. Over-deployment of T&R assets, for example, may result from a legitimate intent to avoid extra delays and costs. For example, T&R company interviewees stressed that under-deployment of equipment – especially when a crash requires substantial travel time – can be costly, as entire response crews may have to wait for additional T&R assets to be deployed.

T&R company interviewees also reported that when they receive incomplete or miscommunicated information they may deploy (and thus bill) more equipment for a crash than

¹⁷ Federal Highway Administration, "Best Practices in Traffic Incident Management: Executive Summary" (September 2010), <https://ops.fhwa.dot.gov/publications/fhwahop10050x/fhwahop10050x.pdf>.

¹⁸ For more on Georgia's TRIP program, see <https://ait.transportation.org/Documents/TRSP/TRSP-TRIP-summary.pdf>; for more on Florida's RISC program, see <http://www.floridatim.com/risc.htm>.

¹⁹ Invoices were counted as itemized if they: 1) specified at least some of the assets used; and 2) had some indication of rates for at least one large asset (wrecker or rotator).

was ultimately necessary. T&R companies often rely on commercial truck drivers, law enforcement officers, or additional intermediaries like public safety dispatchers who may lack a tow operator's expertise in determining the complexity of a recovery. The Towing and Recovery Association of America (TRAA) produces resources to educate individuals on clearly and accurately reporting crashed vehicles.²⁰

T&R regulations may also be responsible for some over-deployment or excess charges. Some states, for example, regulate a minimum level of response from T&R companies to ensure prompt restoration of roadways.

Finally, T&R interviewees noted that, in some cases of delay, insurers may be more responsible than T&R companies for delayed equipment release if they contest an invoice that was not predatory. In instances where motor carriers utilize multiple insurers for different coverage types, additional release delays can occur due to the number of parties and extra administrative work involved.

Identification and Analysis of Predatory Practices in Billing

As noted in the previous section, excessive rates and charges for unnecessary equipment were the two most common types of predatory towing encountered by motor carriers. A second data collection initiative targeted these two billing-related issues by soliciting towing invoices from motor carriers.

ATRI transcribed 490 towaway crash-related T&R invoices from 2021 to 2023, normalizing for consistency.²¹ Total bills before tax ranged from \$250 for a simple heavy-duty towaway to \$110,000 for a complex recovery and clean-up after a severe hazmat crash. The median pre-tax total bill was \$4,993.60, while the mean pre-tax total bill was significantly higher at \$11,681.27. Taxes were excluded from all totals for comparability because of variations in state taxing levels.

Analysis of Towing Rates

Hourly rates were analyzed for each major equipment and labor type. Most rate types followed normal distributions, as shown in the Figures below, suggesting representativeness. Rates were deemed excessive if they exceeded 50 percent more than the national median. This threshold, marked with black lines in the Figures below, was chosen to ensure a consistent, conservative estimate that corresponds with clear tails or breaks in each distribution curve.

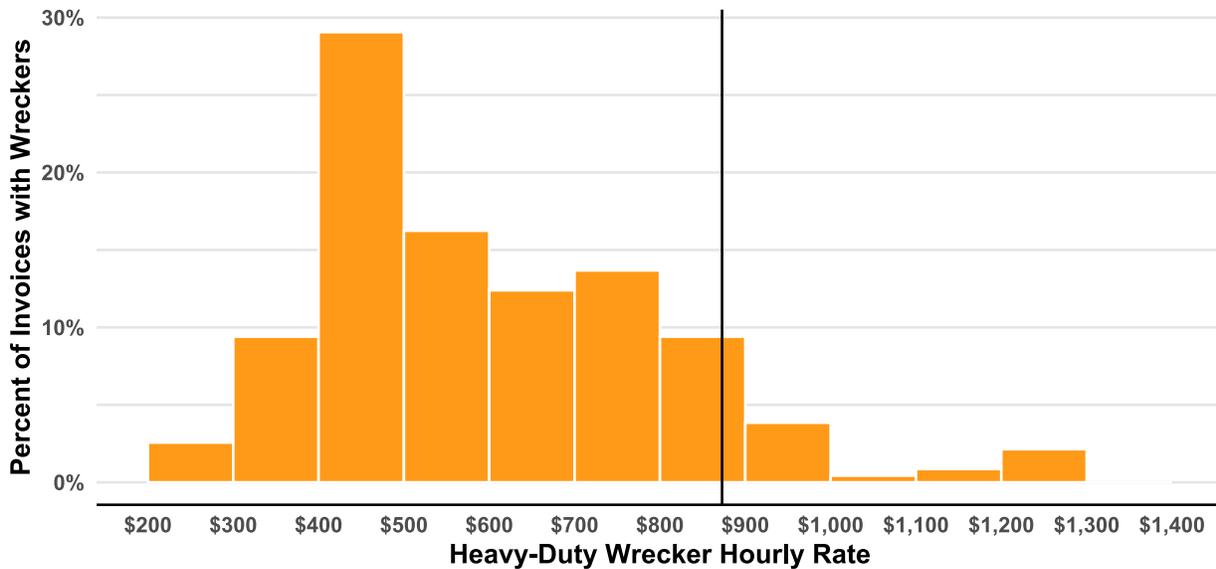
Heavy-duty wreckers deployed for recovery were the most commonly invoiced equipment type in crash-related tows. When wreckers are deployed strictly for towing heavy-duty vehicles and not recovery, they are often billed at a lower rate. Figure 3 shows the percentage of invoiced wreckers in each \$100 hourly rate bin. The median rate for a wrecker was \$582 per hour. The

²⁰ "TRAA Vehicle Identification Guide," Towing and Recovery Association of America, <https://www.respondersafety.com/Download.aspx?id=4621e384-0b17-4f89-a5b5-4775c7edeac8>.

²¹ Steps were taken to tabulate and analyze invoice data consistently. When itemized, hourly equipment rates were combined with operator labor rates to ensure consistency with the majority of T&R invoices, which combined labor and equipment into one line-item. Different technical specifications can lead to lower or higher rates for similar equipment. For example, hourly rates for 50-ton rotators can be 10 percent lower than those for 75-ton rotators. Because many factors that are generally not included on invoices – such as equipment age, towing capacity and condition – can impact rates as well, equipment use and rates were only analyzed by equipment type.

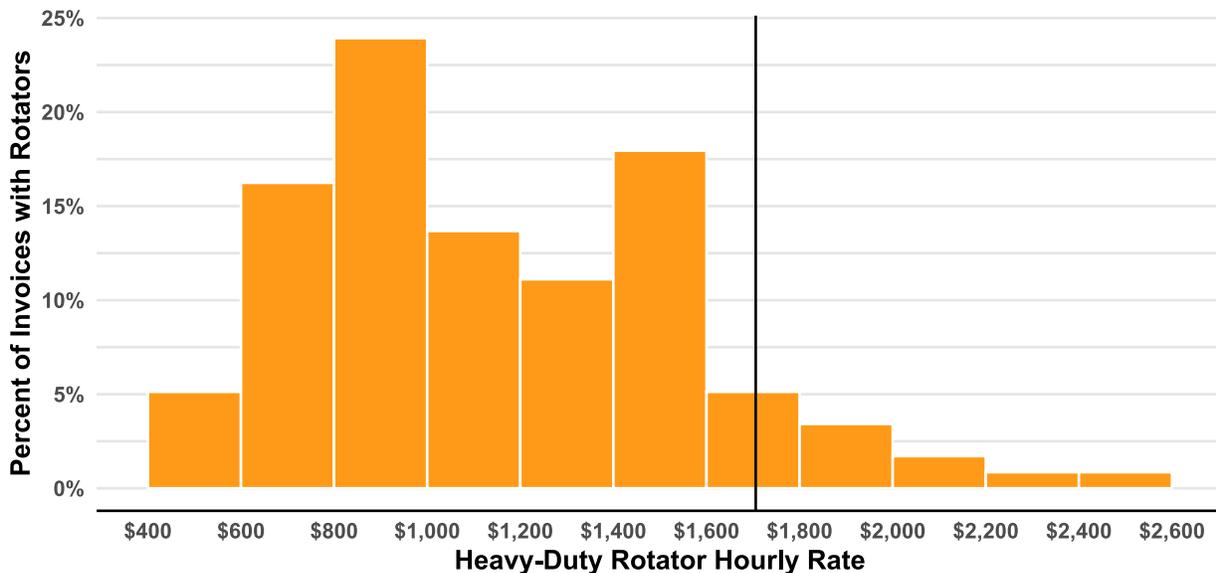
black line in Figure 3, at \$873, marks a rate 50 percent higher than the median, and hourly rates above this threshold were deemed excessive.

Figure 3: Hourly Rates for Heavy-Duty Wreckers



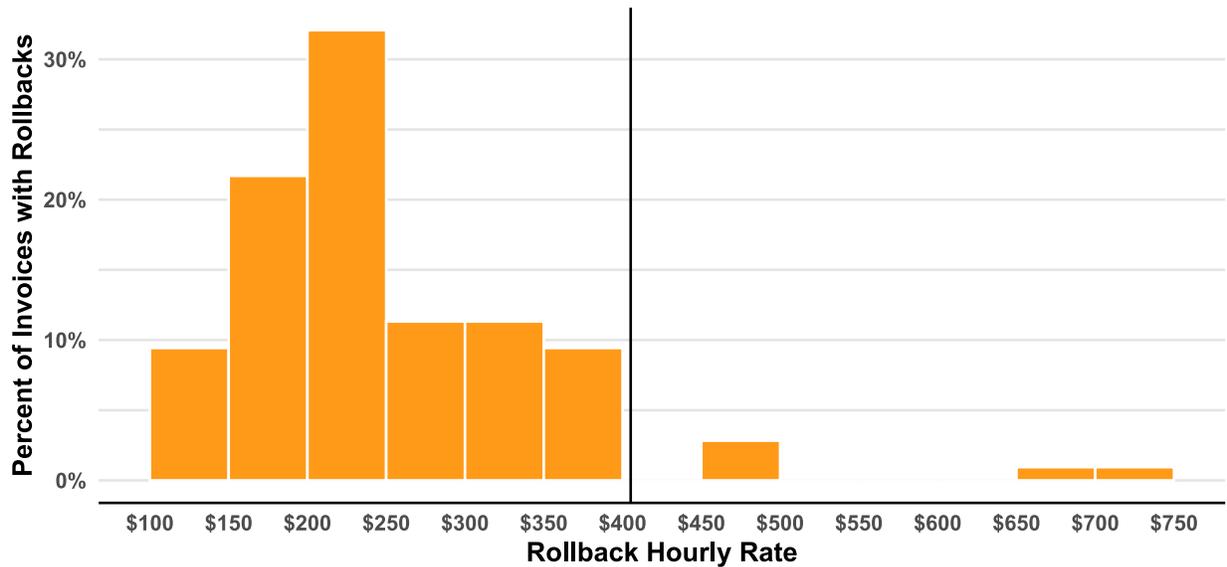
Heavy-duty rotators are another critical equipment type for the recovery of tractor-trailers, especially in severe crashes. Due to asset availability, rotators are sometimes used as wreckers, without the use of their rotating arm, and thus billed at wrecker rate. Accordingly, such deployments were not included as rotators for this analysis. Figure 4 shows the percentage of invoiced rotators in each \$200 hourly rate bin. The median hourly rate for a rotator was \$1,137 per hour, with rates above \$1,705.50 deemed excessive.

Figure 4: Hourly Rates for Heavy-Duty Rotators



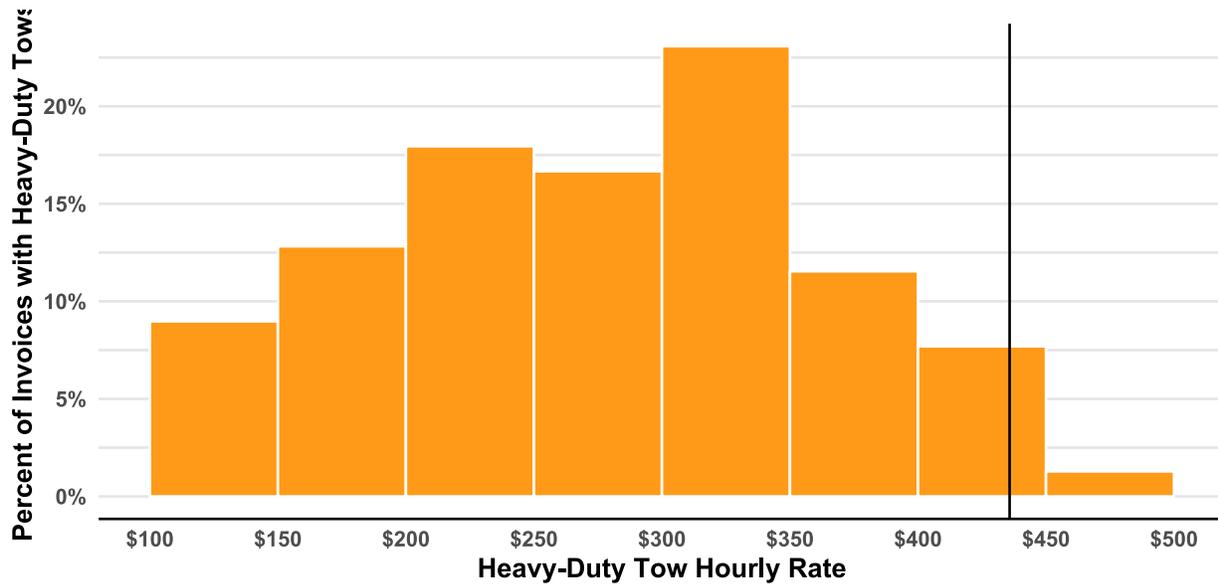
Rollbacks or roll-off trucks are deployed for a wide variety of tasks in heavy-duty recoveries, which may include transporting smaller equipment like skid steers or removing debris. Figure 5 shows the percentage of invoiced rollbacks in each \$50 hourly rate bin. The median hourly rate for a rollback was \$270 per hour, with rates above \$405 deemed excessive.

Figure 5: Hourly Rates for Rollbacks



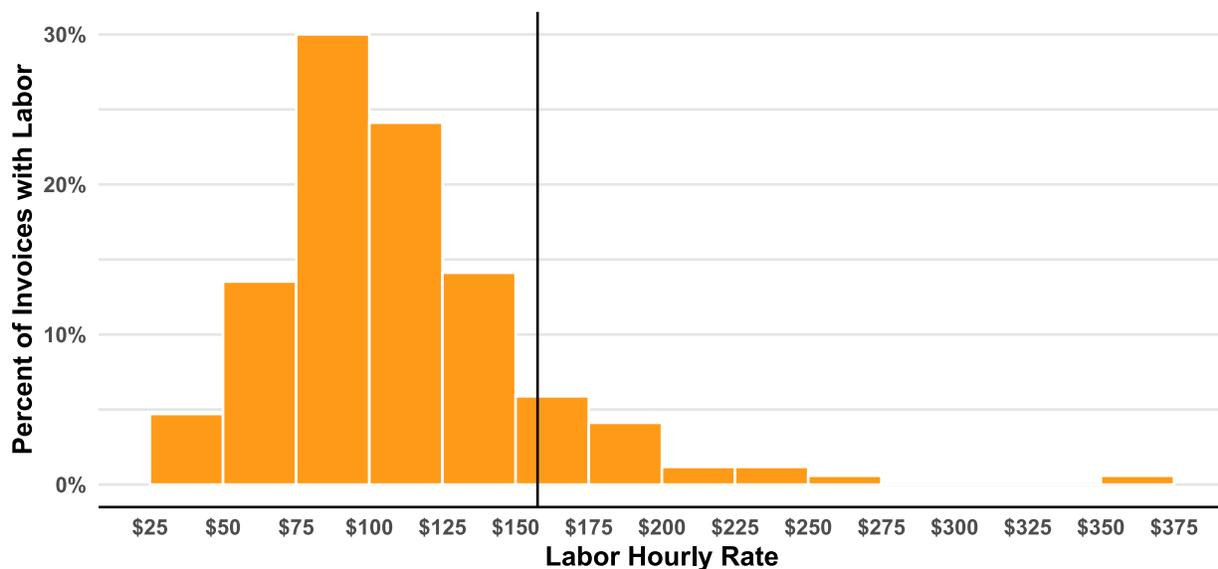
The final equipment rate track in this research was standard heavy-duty towing between two locations. Towing is billed according to numerous different methods, which include per-hour, per-mile, and per-pound rates. When a wrecker or rotator is involved in a recovery, the towing of a crashed truck-tractor is often billed as part of the same line item at the same rate. Standard heavy-duty towing is billed at a lower rate when billed as a separate line item or when a crash does not require recovery. Accordingly, this analysis only includes basic heavy-duty tows billed at an hourly rate. Figure 6 shows the percentage of invoiced tows in each \$50 hourly rate bin. The median hourly rate for a basic heavy-duty tow was \$291 per hour, with rates above \$436.50 deemed excessive.

Figure 6: Hourly Rates for Heavy-Duty Towing



Extra labor – defined as workers who assist at the crash site but do not operate one of the primary recovery equipment assets – are often necessary for a variety of T&R-related tasks. These tasks may include rigging, cleanup of spills or debris, securing damaged vehicles, directing traffic, and more. Figure 7 shows the percentage of invoiced labor in each \$25 bin. This category includes only standard hourly rates for additional, non-supervisory labor. The median rate for extra labor was \$105 per person per hour; rates above \$157.50 were deemed excessive.

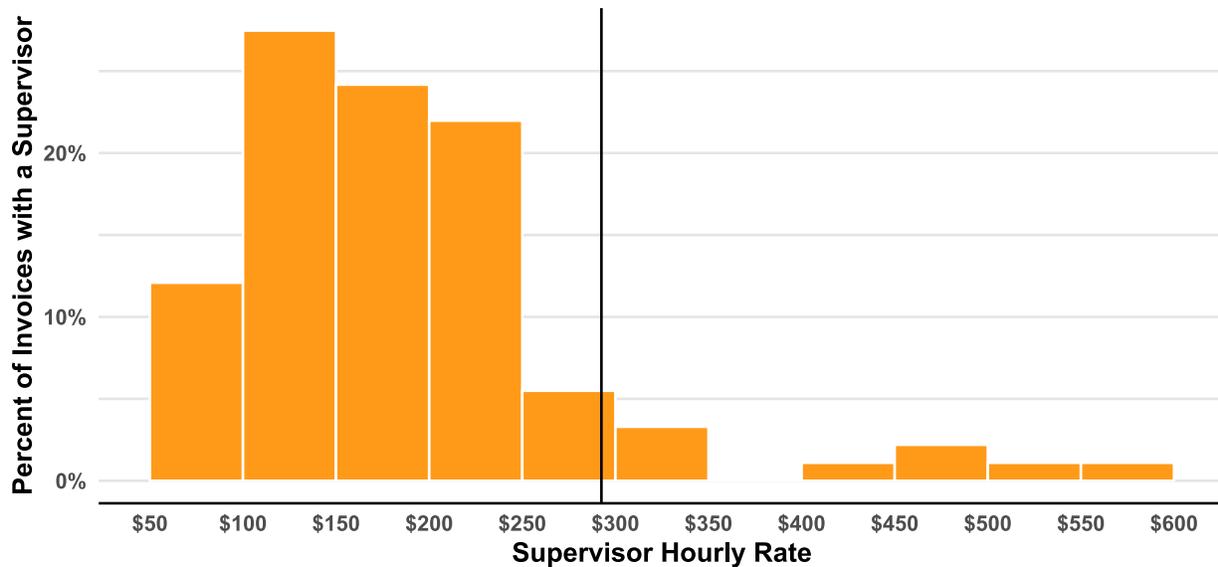
Figure 7: Hourly Rates for Extra Labor



Complex recoveries often require a trained supervisor to coordinate work at the site and ensure personnel safety. These workers require a higher level of expertise and sometimes possess additional certifications, so their labor is billed at a higher rate. When multiple supervisors were

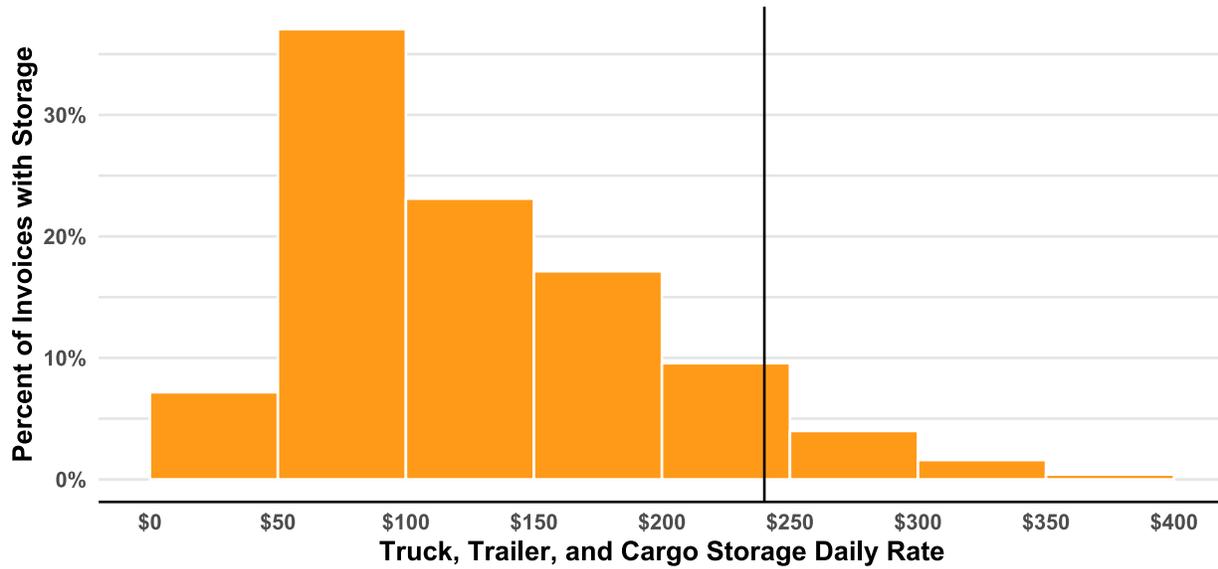
billed on the same invoice, the highest rate was recorded. Figure 8 shows the distribution of hourly labor rates for supervisors. The median hourly rate for supervisor labor was \$195 per hour, 85.7 percent higher than the hourly rate for extra labor. Supervisor rates were less normally distributed than other rates because supervisors' tasks and qualifications vary more widely between crashes and T&R companies. Supervisor rates above \$292.50 were deemed excessive.

Figure 8: Hourly Rates for Supervisors



Storage rates were an area of particular concern for carriers because this expense can quickly spike when T&R companies detain equipment while a carrier or its insurer contest an invoice. For comparability across all invoices, equipment storage rates were summed in cases where truck-tractors, trailers, and/or cargo were itemized separately. Figure 9 shows the distribution of daily storage rates.

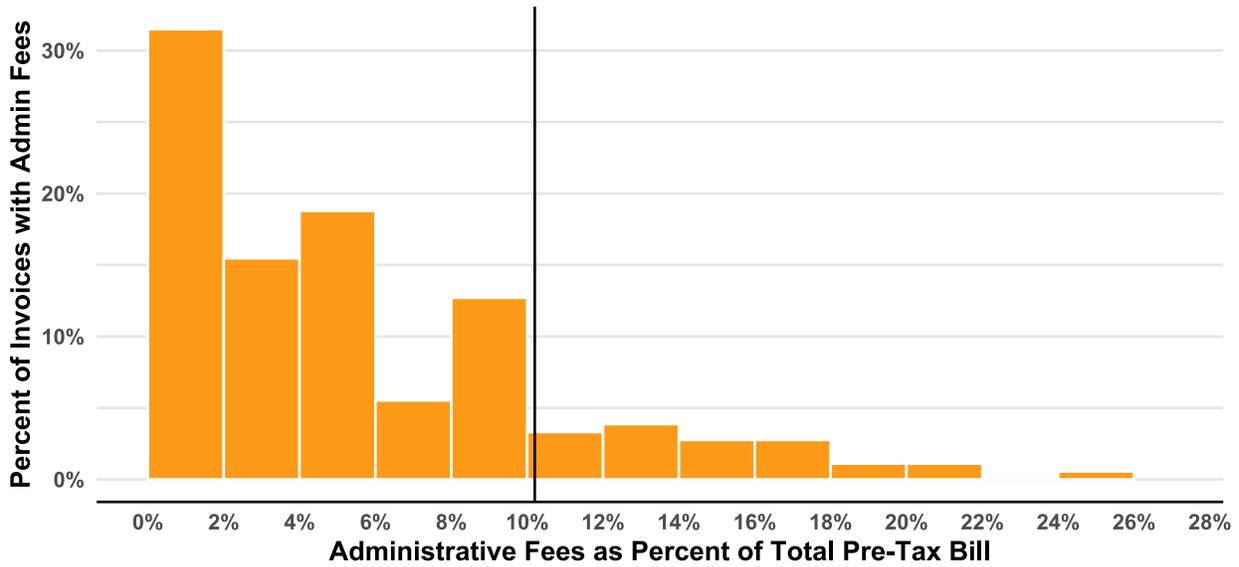
Figure 9: Daily Storage Rates



The median daily storage rate, inclusive of all equipment and cargo, was \$120 per day. The black line in Figure 9, at \$240, marks a rate 100 percent higher than the median, anything above which was deemed excessive. This higher threshold (100% versus 50% more than the median) was used to reflect higher real estate costs in some parts of the country, which can increase the appropriate value of storage.

Many T&R companies charge some form of administrative fee for heavy-duty crash-related tows. Some T&R companies set a flat administrative fee for responding to any heavy-duty crash, but administrative fees are more often charged as a percentage of the pre-tax subtotal invoice. Thus, for comparability, all administrative fees were transformed into percentages of the subtotal bill. Any other types of base service fees billed in addition to equipment and/or labor rates were included as administrative fees. Figure 10 shows the distribution of administrative fees only for invoices that included them.

Figure 10: Administrative Fees as Percent of Subtotal Bill

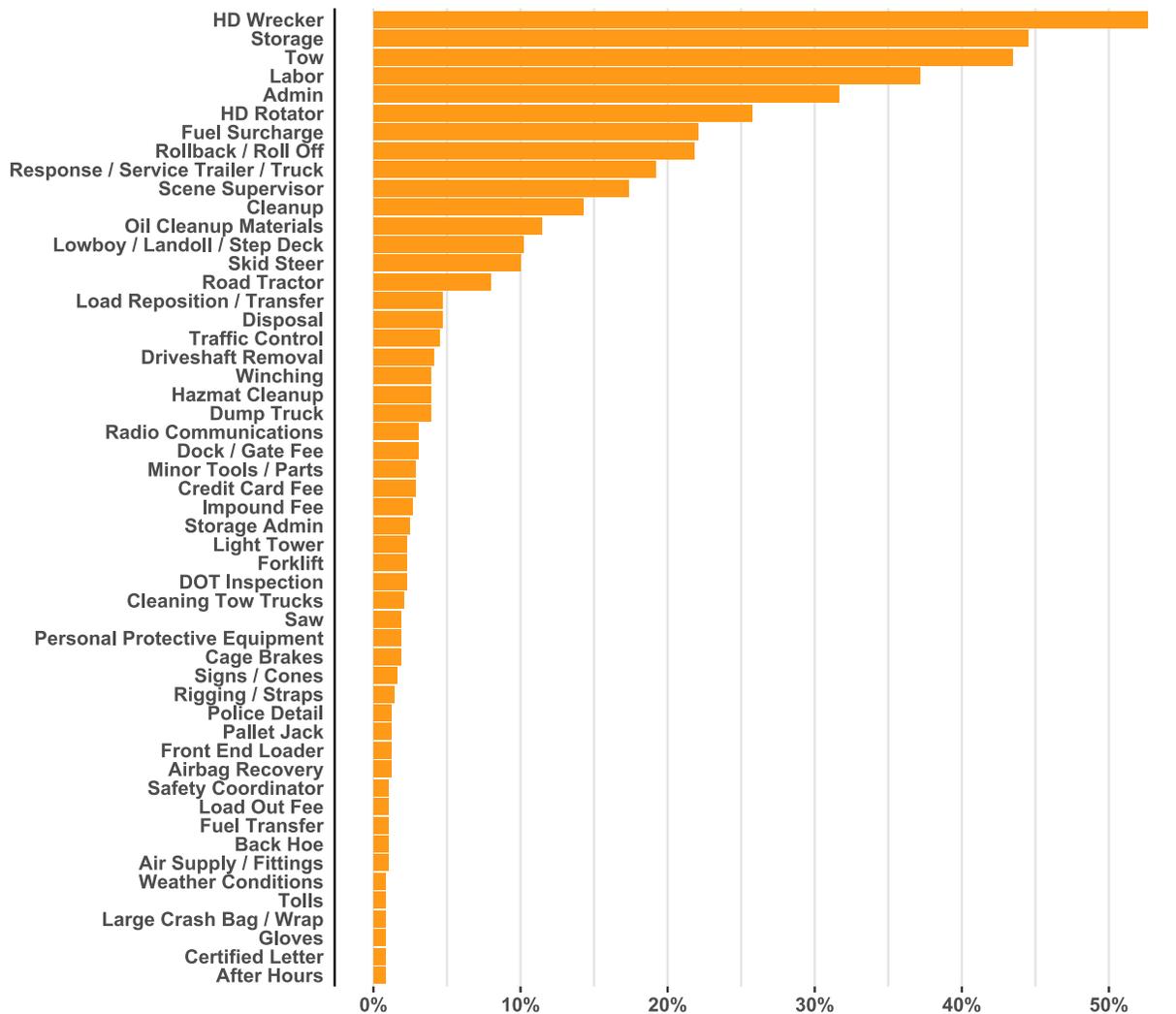


Thirty-two percent of invoices include administrative fees. The median administrative fee, *when included on an invoice*, was 5.1 percent of the subtotal bill (before the addition of taxes and administrative fees). However, a plurality of administrative fees – 38 percent – amounted to less than 3 percent of the total pre-tax bill. The black line in Figure 10, at 10.2 percent, marks an administrative fee 100 percent higher than the median, anything above which was deemed excessive. This higher threshold (100% rather than 50%) was used to accommodate potential differences in billing practices between T&R companies, such as offsetting equipment rates with a general service fee.

Analysis of Miscellaneous Service Charges

Though wreckers, labor and storage are the most commonly invoiced service charges, T&R companies invoice for a variety of additional miscellaneous services, tools and materials when responding to large crashes. Figure 11 shows the percentage of invoices on which each service charge appeared.

Figure 11: Appearance of Service Charges



Miscellaneous expenses can often lead to miscommunication or predatory billing because they are often irregular services, poorly described and/or not billed at a consistent rate. Some miscellaneous line-items on invoices are redundant – such as a fee for setting up a rotator in addition to the full rotator hourly rate or a fee for caging brakes in addition to the full hourly labor rate (Figure 11). Charges for every hand tool used in a recovery are used to inflate bill totals when these expenses are already covered by a base charge or full rates for primary equipment. In some cases, the sum of hourly charges for small equipment like gloves, saws, or pallet jacks actually exceeds their original purchase price. Motor carriers can identify these types of unwarranted or additional equipment or labor charges on invoices.

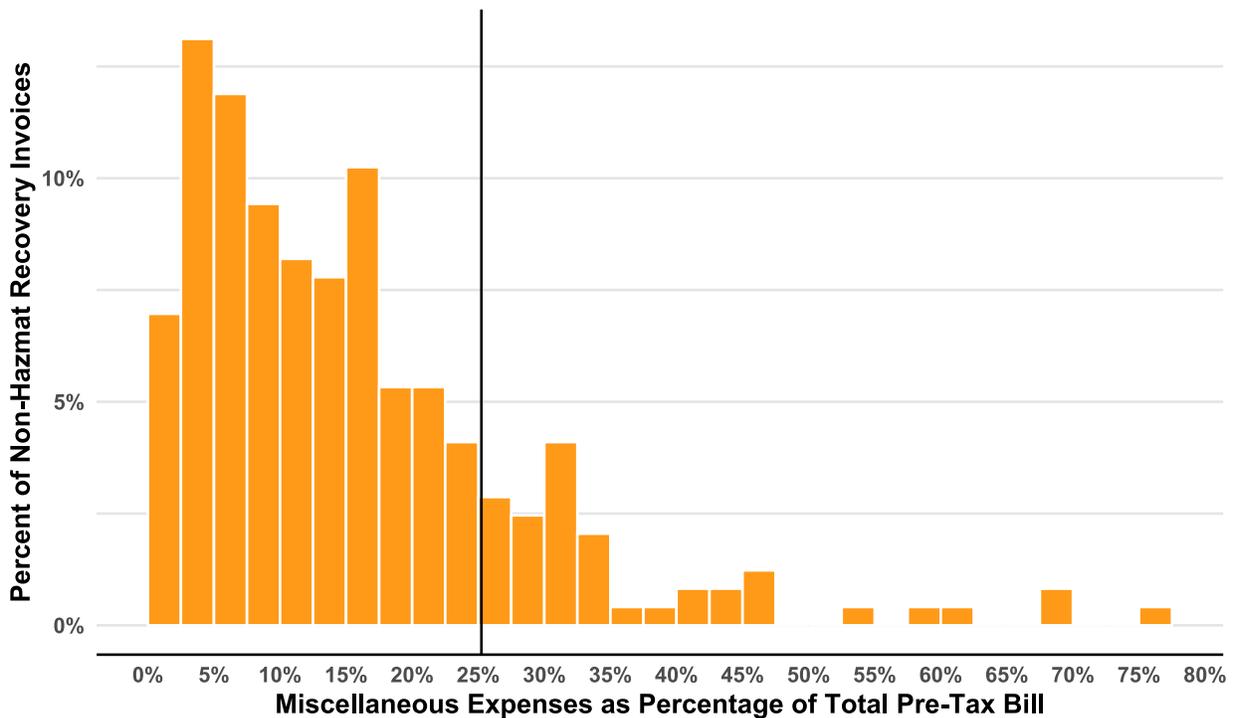
Other methods of inflating bills with miscellaneous expenses are more difficult to identify. In multi-vehicle crashes, some T&R companies bill hours from one recovery to both parties. In other instances, T&R companies bill for miscellaneous items that were not necessary or used during the tow or recovery in question. Carriers can identify some of these additional expenses by evaluating the context of the full invoice, but others can only be identified if carriers instruct drivers to photograph the crash site and recovery process.

One way to evaluate miscellaneous expenses in the context of the crash is to calculate their share of the total invoice. For the purposes of this analysis, miscellaneous expenses include all line-items not already counted under labor, administrative or storage and include all equipment types smaller than a skid steer, except for response trucks. The most common miscellaneous expenses are materials, tools and small equipment, as well as additional fees for managing crashed trucks, crash sites or cleanup.

Nearly half (49%) of invoices include miscellaneous expenses. Miscellaneous expenses become problematic when they are disproportionate to the core recovery and towing work required. To account for these factors, miscellaneous expenses were tracked as a percentage of the total pre-tax amount billed.

Figure 12 shows the distribution of miscellaneous expenses as a percentage of the total pre-tax bill. It does not include recoveries involving hazardous materials, as these can incur significant additional cleanup and safety expenses that would otherwise appear as predatory.

Figure 12: Miscellaneous Expenses as Percent of Total Pre-Tax Bill



Miscellaneous expenses, when included on an invoice and excluding hazmat crashes, amounted to a median of 12.6 percent of the total pre-tax bill. Miscellaneous expenses above 25.2 percent were deemed excessive. This higher threshold of 100 percent more than the median was used because miscellaneous fees can vary considerably based on circumstances unique to each crash.

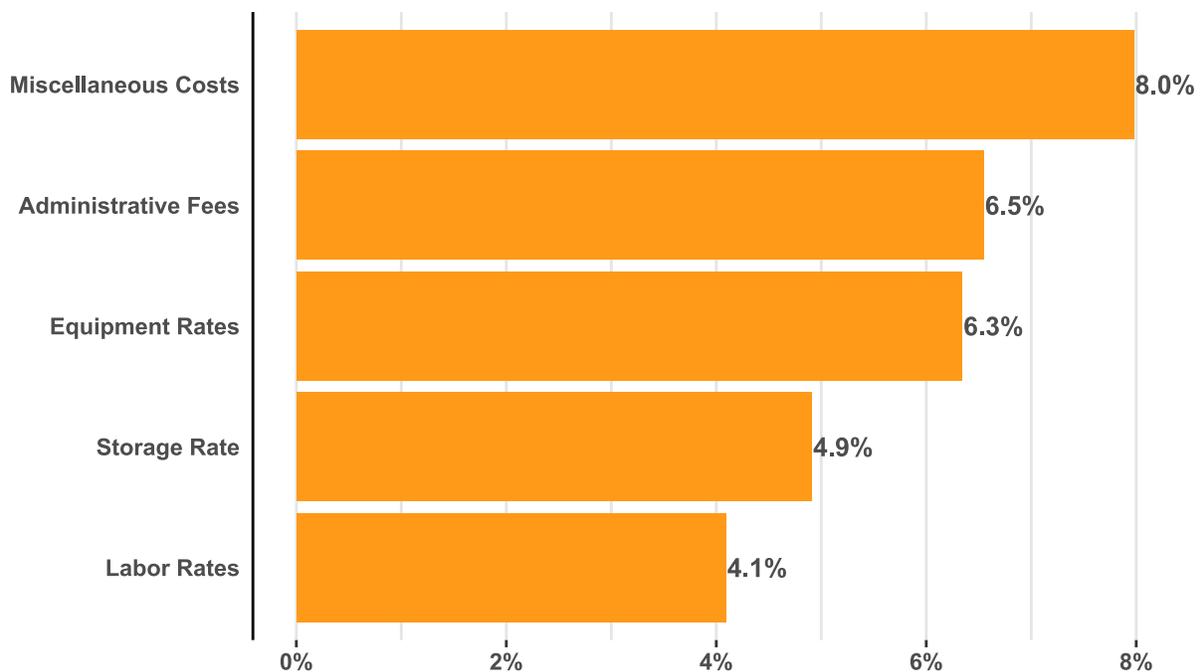
Analysis to Determine the Estimated Frequency of Predatory Billing

The estimates of predatory billing by service charge type in the previous two sections were used to identify the proportion of crash-related tows that were potentially predatory.

A threshold of 50 percent higher than the median was used to define predatory rates for all equipment and labor costs. A higher threshold of 100 percent higher than the median was deemed more appropriate for storage rates as well as the percentage of the pre-tax total bill invoiced to administrative fees or to miscellaneous expenses, in order to fairly represent greater reasonable variation in these line-items. In general, these thresholds correspond to breaks or tails in the distribution of rate data.

On this basis, 29.8 percent of invoices were identified as containing some form of predatory billing, as shown in Figure 13. This percentage only represents predatory billing; it does not include other forms of predatory towing, such as vehicle seizure without cause or cargo release delays. It also does not include practices such as fraudulent billing of extra hours, which cannot be determined from invoices alone.

Figure 13: Proportion of Predatory Crash-Related Tows



The most common form of predatory billing was miscellaneous costs, found in 8.0 percent of invoices. Administrative fees two times higher than the median were present in 6.5 percent of invoices, while excessive equipment rates (including wreckers, rotators, rollbacks, and tows) were found in 6.3 percent of invoices. Storage rates and labor rates were excessive in 4.9 and 4.1 percent of invoices, respectively.

In comparing predatory towing bills to non-predatory bills, the overall average total pre-tax bill for a crash-related tow was \$8,925.90 while the average for bills identified as predatory was \$18,154.52.

For invoices totaling \$30,000 or more, 66 percent were found to be predatory, more than twice the overall predatory invoice frequency of 29.8 percent.

This is in part because more complex recoveries provide more opportunities for predatory practices. Table 1 shows that towaway crash-related incidents with more heavy-duty wreckers and/or rotators had higher percentages of predatory invoices.

Table 1: Percentage of Predatory Invoices by Number of Wreckers and/or Rotators

Number of Heavy-Duty Wreckers/Rotators	Percentage of Predatory Invoices
0	12.9%
1	33.1%
2	45.8%
3+	55.5%

Towing and Insurance Coverage Findings

Insurers are central stakeholders in the issue of predatory towing because they are the primary intermediary between trucking companies and T&R companies. As such, insurers handle the majority of direct negotiations and payment with T&R companies after a crash.

If the cause of a crash is not a covered loss, a motor carrier’s policy may not cover associated towing expenses either. Mechanical breakdowns are usually not covered in general – though some insurers offer separate endorsements for this class of tow – and certain policies may exclude other specific causes of loss.

Towing expenses typically fall under three separate coverage types based on the aspect of a crash to which each performed task applies:²²

- Auto liability insurance covers expenses related to the clean-up of oil, diesel, the roadway, surrounding environs, or hazardous materials;
- Cargo insurance covers expenses related to the transportation, management, or loss of cargo; and
- Physical damage insurance covers expenses related to towing or recovering truck-tractors or trailers.

ATRI’s survey of insurers found that the vast majority of motor carriers (95%) are adequately protected in all three of these coverage types, though some carriers are not.

Some motor carriers utilize different insurers for the different coverage types listed above. When multiple insurers become involved in a single towing invoice, additional delays can arise according to insurers interviewed by ATRI. This is also true when a truck-tractor and a trailer are owned by separate companies, each with their own insurers. T&R company interviewees note that generating separate invoices by the amount of time spent on tractors, trailers, and cargo, whether for multiple insurers or multiple coverage types with the same insurer, can cause additional delays and expense. Similarly, T&R companies reported that delays often occur

²² The specific terms of any insurance policy, in addition to any pertinent regulations in the jurisdiction of a crash, govern when and which policy types will apply; these categories are generalizations.

when a motor carrier lacks any of the three pertinent insurance coverage types and thus has to pay a larger portion of the invoice out of pocket.

Insurers reported, on average, that 90 percent of towing invoices exceed what motor carriers are responsible for in deductibles, leaving the remaining obligation to insurers. As a result, insurers pay 86 percent of the total billed amount for towing on average. However, towing limits are present in many policies. Motor carriers with policies that have limits for towing expenses are more vulnerable to predatory towing, as these motor carriers are responsible for expenses that exceed their limit.

Negotiating invoices is a major part of insurers' involvement in heavy-duty towing; on average, insurer respondents contest 50 percent of towing invoices. When insurance companies do contest invoices, an average of 51 percent are ultimately revised downward by T&R companies. Though results vary considerably across insurers, this high percentage of contested invoices that are revised downward further suggests that excessive billing practices are relatively common.

Different deductible levels and policies will determine how much of a T&R invoice the motor carrier pays before their insurance coverage is activated. Even when the costs of predatory towing are mostly covered by insurers, however, those costs are passed back to motor carriers in the form of higher premiums, meaning that the required \$750,000 auto liability coverage minimum does not protect carriers from rising costs associated with persistent predatory towing.

Analysis of State Variations in Predatory Towing

The T&R industry is highly localized, leading to variations in the frequency and type of predatory incidents between states and even between municipalities.

Surveyed motor carriers were asked to self-report the number of predatory towing incidents of any type that they encountered in each state in 2021 as well as the share of their total mileage spent in that state. Motor carriers with complete responses represented one billion vehicle miles traveled in 2021.

The analysis calculated each state's percentage share of the total mileage in the sample and percentage share of the total predatory incidents in the sample. The share of total mileage was then subtracted from the share of total incidents to determine which states had a disproportionate share of predatory towing incidents. A greater difference in percentage points suggests that motor carriers in that state were more likely to encounter predatory incidents. Table 2 shows the top ten states with the highest share of predatory incidents relative to carriers' mileage in the state.

Table 2: States with the Most Reported Predatory Incidents Relative to Mileage

State	Share of Incidents	Share of Mileage	Difference in Percentage Points
Indiana	4.61%	1.98%	2.63
New Jersey	4.48%	2.41%	2.07
Mississippi	2.64%	1.15%	1.49
California	6.98%	5.53%	1.45
Washington	1.98%	0.61%	1.37
Arizona	3.03%	1.74%	1.29
Massachusetts	2.37%	1.11%	1.26
Texas	6.19%	5.19%	1.00
Michigan	1.58%	0.83%	0.75
New York	3.56%	2.82%	0.74

Indiana had the most disproportionately high share of predatory towing incidents, followed by New Jersey. The top ten states in Table 2 are located in all parts of the U.S., confirming that there is no regional pattern to predatory towing incidents.

Summary of State Towing Regulations

As stated previously, the T&R industry is highly localized, and this localization is reflected in the fact that most T&R-related regulations generate from municipalities and county governments.

Nevertheless, within the past few years Maryland, Arizona, and Colorado have all passed statewide laws regulating the T&R industry.²³ Maryland directly addressed the concerns of motor carriers when it passed House Bill 487 in 2022. For police-initiated towing, the bill outlawed per-pound billing, created guidelines to allow for the release of cargo, and established a committee that would recommend rates for heavy-duty T&R and handle invoice disputes. The passing of the bill was applauded by the trucking industry.²⁴

Other states have not been as successful in their efforts to regulate the T&R industry. In 2021, Missouri’s governor vetoed House Bill 661 on the grounds that it overregulated the market. Had the bill passed, it would also have established a committee to determine reasonable rates for T&R services and review complaints regarding the nonconsensual police-initiated towing of commercial motor vehicles.²⁵

²³ Keith Globe, “OOIDA welcomes Maryland towing rule changes,” *Land Line Media* (July 10, 2023), <https://landline.media/ooida-welcomes-maryland-towing-rule-changes/>.

Rebekah L. Sanders, “10 things towing companies can’t do under new Arizona law,” *AZ Central* (April 2018), <https://www.azcentral.com/story/money/business/consumers/2018/04/18/arizona-tow-truck-company-law-driver-rights/528894002/>.

Patrick Nelson, “New ‘towing bill of rights’ in Colorado aims to protect consumers from unfair practices,” *KOAA News5* (July 12, 2022), <https://www.koaa.com/money/consumer/new-towing-bill-of-rights-in-colorado-aims-to-protect-consumers-from-unfair-practices>.

²⁴ Keith Globe, “OOIDA welcomes Maryland towing rule changes,” *Land Line Media* (July 10, 2023), <https://landline.media/ooida-welcomes-maryland-towing-rule-changes/>.

²⁵ Greg Grisolano, “Missouri governor vetoes OOIDA-backed towing reform bill,” *Land Line Media* (July 13, 2021), <https://landline.media/missouri-governor-vetoes-ooida-backed-towing-reform-bill/>.

Of the states that have more robust statewide regulations of the T&R industry, regulatory authority can fall under the jurisdiction of a variety of agencies, including state police or departments of public safety, departments of transportation, consumer affairs, or utility commissions. The wide range of jurisdictions that regulate the T&R industry can make it difficult for interstate motor carriers to know what protections are at their disposal.

To provide more clarity in regulations, ATRI produced a Compendium of state towing regulations that includes direct citations of equipment and storage rate limits, invoicing and crash site documentation requirements, rules on tow choice and vehicle seizure, complaint process contacts, and other regulations for police-initiated crash and private property tows in all states where regulations exist. The full Compendium can be found [online here](#).

The full Compendium is summarized in Table 3. States with a double asterisk (**) were among the top ten states with the most reported predatory towing incidents relative to reported carrier mileage in those states (Table 2).

Table 3: Summarized Compendium of Statewide Regulations Against Predatory Towing²⁶

State				Police-Initiated Tow Crash/Disabled Vehicle		Private Property Impound	
	Invoice Itemization	Cargo Release Requirements	Maximum Heavy-Duty Tow Rates	Motor Carrier Preferred Towing Service Choice	Complaint Process	Maximum Heavy-Duty Tow Rates	Prior Property-Owner Written Authorization
Alabama		✓					
Alaska							
**Arizona	✓		✓				✓
Arkansas	✓			✓	✓		✓
**California	✓						✓
Colorado	✓		✓		✓	✓	✓
Connecticut	✓		✓		✓	✓	
Delaware				✓			
Florida				✓			
Georgia				✓		✓	✓
Hawaii							
Idaho							
Illinois	✓			✓			✓
**Indiana	✓			✓			
Iowa							
Kansas							
Kentucky	✓			✓			
Louisiana	✓		✓	✓	✓	✓	
Maine	✓	✓					
Maryland		✓					✓
**Massachusetts			✓	✓	✓	✓	
**Michigan				✓			
Minnesota				✓			

²⁶ Since the Compendium was solely focused on statewide regulations, regulations at the county and municipality level were not included in this analysis. States that regulate police-initiated towing rates but delegate the actual setting of rate limits to individual state trooper divisions (such as California, for example) were also excluded from Table 3, as in practice these are equivalent to regulations put in place by counties or municipalities. States were counted as having complaint processes for police-initiated towing if there was a centralized complaint process for all state police towing (in contrast to only filing disputes with the division that initiated the tow) or if complaints could be made to a non-police regulatory agency aside from the state's Attorney General's office.

State			Police-Initiated Tow Crash/Disabled Vehicle			Private Property Impound	
	Invoice Itemization	Cargo Release Requirements	Maximum Heavy-Duty Tow Rates	Motor Carrier Preferred Towing Service Choice	Complaint Process	Maximum Heavy-Duty Tow Rates	Prior Property-Owner Written Authorization
**Mississippi							
Missouri				✓			✓
Montana				✓	✓		
Nebraska							
Nevada	✓	✓			✓		✓
New Hampshire				✓	✓		
**New Jersey		✓	✓				✓
New Mexico			✓	✓	✓	✓	✓
**New York							
North Carolina				✓			✓
North Dakota							
Ohio			✓		✓	✓	
Oklahoma	✓		✓		✓	✓	
Oregon				✓			✓
Pennsylvania				✓			
Rhode Island				✓	✓		✓
South Carolina				✓			
South Dakota							
Tennessee	✓	✓		✓			✓
**Texas	✓				✓	✓	✓
Utah			✓		✓	✓	
Vermont				✓			
Virginia		✓					
**Washington		✓	✓	✓	✓	✓	✓
West Virginia	✓		✓		✓	✓	
Wisconsin							
Wyoming	✓				✓		

Maximum Heavy-Duty Towing Rate Regulations

Based on definitions used in this report, 12 states regulate maximum rates for police-initiated crash or disabled heavy-duty vehicle towing, and 12 states regulate these rates for private-property towing (Table 3). All of these states, 14 in total, also have maximum daily storage rates, to limit the financial cost to the motor carrier should it take time to retrieve the vehicle.

The effectiveness of rate regulation depends on its comprehensiveness. Four of the ten states with the highest proportion of predatory tows regulate police-initiated towing rates (Table 3), which may be a function of inadequate enforcement, limited awareness, or narrow jurisdiction of the regulations themselves. For example, there are a wide variety of methods for calculating rates among states for even basic towing services. In New Jersey, a basic heavy-duty towing charge is capped at \$500 per hour including hookup and 15 minutes of wait time,²⁷ whereas in Massachusetts the maximum allowable charge for basic towing is \$108 per hour but subject to an extra rate for mileage and additional charges.²⁸ Furthermore, rate regulations in areas under the jurisdiction of a state patrol may differ just as substantially from rate regulations in areas under municipal jurisdiction – if they exist at all – in the same state.

Even in states that regulate *towing* rates, many other common charges remain unregulated. States that regulate the hourly rate for *towing* a heavy-duty truck, for example, may not regulate the hourly rate for *recovering* it. In addition, many billed expenses fall into administrative or miscellaneous categories that are often left unregulated. A T&R company could easily comply with rate regulations while transferring excessive charges to other line items, as previously shown in the Predatory Billing section. Since each T&R company can define their services uniquely, such practices undermine the intent of the law but nevertheless appear legitimate.

To address these loopholes, any state or local governments seeking to regulate rates would need to ensure that regulations cover equipment types used in towing and recovery as well as administrative and miscellaneous fees. Efforts should be made toward consistent rate regulation across jurisdictions within the same state as well.

Cargo Release Rules

Only eight states have legislation explicitly requiring tow companies to release cargo to the motor carrier (Table 3), with Alabama and Maryland having strong, clear language for such cases. Alabama's State Code states that for any commercial vehicle subject to a nonconsensual tow, "freight and contents in or on the commercial vehicle may not be held by the towing and recovery service to secure towing and recovery charges."²⁹

In Maryland, when there is any genuine dispute between a motor carrier and/or its insurer and a T&R company, the language requires that the T&R company:

"shall release the cargo immediately to [the motor carrier] in accordance with this subsection on submission of: (1) Proof of ownership if the cargo does not belong to the transportation company or; (2) if the cargo belongs to the transportation company: (A) A

²⁷ Garden State Towing Association, "Maximum N.J State Police Rates" (accessed on 2023), <https://gsta.org/state-police-rates/>.

²⁸ Massachusetts State Police, "Consumer Guide to State Police Towing" (accessed on August 2023), <https://www.mass.gov/guides/consumer-guide-to-state-police-towing#-maximum-charges-for-heavy-duty->.

²⁹ Rules governing towing and recovery services; service charge dispute resolution process., *The Code of Alabama*, Title 41-27-61, <http://alisondb.legislature.state.al.us/alison/CodeOfAlabama/1975/Coatoc.htm>.

letter from the insurance company stating there is coverage for the relevant claim or accident or... (B) If an insurance policy required under item 2 of this item is not high enough to cover the cost of the cargo clean-up, a signed letter of guarantee from the transportation company.”³⁰

Twenty states have laws mandating that towing companies allow vehicle owners and operators to have access to any personal items or simply the “contents” of any vehicle.³¹ Whether access to these items includes cargo can be vague. Both New Jersey and Washington have definitions of personal property and belongings that indirectly include cargo. The New Jersey State Police consider “personal property” to be any item not directly affixed to the vehicle and require that it be released to the motor carrier.³² Washington includes both personal property and contents of the vehicle under “personal belongings.” It should not be assumed, however, that laws mandating the release of personal items include cargo. Wyoming, similar to New Jersey, considers any contents of the vehicle not directly attached as personal property, but it explicitly excludes any commercial cargo from this definition.³³

The degree of specificity in cargo release regulations may have an impact on their effectiveness. Only two of the ten states with the highest proportion of predatory towing incidents have some level cargo release protection, and these two – New Jersey and Washington – only do so indirectly, as noted in the previous paragraph. By contrast, other states in Table 3 like Alabama and Tennessee have regulatory language that explicitly ensures the release of cargo. Accordingly, states should pursue towing legislation that explicitly calls for cargo release.

According to interviewed legal experts and based on caselaw, it is arguably a violation of the Federal Hobbs Act (and Racketeer Influenced and Corrupt Organizations or RICO Act) to hold cargo under threat of economic duress, regardless of whether the state expressly outlaws holding cargo.

Rules Requiring Motor Carrier Choice of T&R Company in Police-Initiated Towing

Motor carriers typically prefer to utilize T&R companies that they have a relationship with versus an unfamiliar T&R company on a police rotation list. Twenty-three states have language either in their laws or in State Police policy documents that support the right of motor carriers to choose their T&R company (Table 3). Nevertheless, four of the ten states with the highest proportion of predatory towing incidents have this “choice” regulation, and motor carriers reported being able to use a T&R company of their choice in only 10 percent of incidents overall nationwide.

There are two hypotheses for why motor carriers are unable to choose their own T&R company in practice even when state regulations support choice in theory. First, interstate motor carriers may not have any preferred T&R companies in the location of the incident. Second, a carrier-

³⁰ Police-initiated towing services authorized - Reasonable access to towed vehicle - Tow company fees., *Code of Maryland*, Commercial Law, Title 16A-101,

<https://mgaleg.maryland.gov/mgawebsite/laws/StatuteText?article=gcl§ion=16A-101&enactments=false>.

³¹ See the full Compendium at <https://truckingresearch.org/wp-content/uploads/2023/11/ATRI-Predatory-Towing-Compendium-11-2023.pdf>.

³² New Jersey State Police, *New Jersey State Police Application and Minimal Requirements for Vehicular Towing* (September 22, 2017), https://nj.gov/njsp/information/pdf/towing_minimum_requirements.pdf.

³³ Definitions., Wyoming Statutes, Title 31-12-101, <https://wyoleg.gov/NXT/gateway.dll?f=templates&fn=default.htm>.

preferred T&R company typically must be able to arrive at the scene in a reasonable time period, often 30-45 minutes depending on the state, and/or the vehicle must not be heavily impeding traffic flow or causing a public safety hazard. Though it may be law or policy to support motor carrier choice for towing services, fundamentally the decision belongs to law enforcement and what they believe is in the best interest of the public.

As such, the role of law enforcement in predatory towing is pivotal. First responders are tasked with determining crash site severity, deciding whether it allows for motor carriers to call their own service, and relaying crash information to the rotation list T&R company for the deployment of assets, should that be their determination. For motor carrier choice regulations to effectively reduce predatory towing, regulatory language should explicitly prioritize choice and define when it should be offered rather than providing vague encouragement.

Law enforcement agencies and regulatory bodies at both the state and local level should be strategic in developing criteria for their T&R rotation lists to ensure that T&R companies have the appropriate equipment, training, and rate structures to accommodate heavy-duty vehicle towing.

New Hampshire and South Carolina are examples of states with regulations to combat excessive rates due to over-deployment. Both require that if towing services arrive at the scene with heavier or more specialized equipment than is required, then the rates assessed shall match the level of equipment that should have been sent.³⁴ Regardless, police training on how to best assess crash sites involving heavy-duty vehicles is vital to determining whether a rotation-list call is necessary (versus allowing motor carrier choice) and the appropriate equipment is deployed in the first place.

Improper Seizure of Vehicle Rules

Towing-related incidents are obviously stressful for truck drivers, and some T&R companies have leveraged this situation to pressure drivers into giving them consent to tow.³⁵ Fourteen states have taken measures to combat these exploitative practices by banning towing operators from soliciting business on state highways.³⁶ In these states, the only T&R services allowed at the scene of an incident are ones called either by first responders or by the motor carrier. Banning roadside solicitation can protect drivers and carriers from inadvertently entering into consensual tow agreements and losing the protection of any nonconsensual tow regulations.

In the case of private property impound towing, 17 states require that towing operators receive written authorization from the property owner or their agent to remove any given vehicle (Table 3). It is important that property owners identify the specific vehicles deemed improperly parked rather than giving towing operators carte blanche permission to remove any vehicle they believe

³⁴ State Police; Use of Tow List., *New Hampshire Revised Statutes*, Title 7-106-B:27, <https://www.gencourt.state.nh.us/rsa/html/VII/106-B/106-B-27.htm>. Regulation of Wrecker Services., *South Carolina Code of Regulations*, Chapter 38-600, <https://www.scstatehouse.gov/coderegs/Chapter%2038.pdf>.

³⁵ Lisa Parker and Tom Jones, "Crash and Burned: Chicago's Predatory Tow Reputation Among The Nation's Truck Drivers," *NBC Chicago* (May 19, 2022), <https://www.nbcchicago.com/consumer/crash-and-burned-chicagos-predatory-tow-reputation-among-the-nations-truck-drivers/2835845/>.

³⁶ Delaware, Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, Missouri, Oregon, Pennsylvania, South Carolina, Tennessee, Vermont, and Wyoming. Full Compendium.

to be in violation. Additionally, six states have laws requiring that T&R companies take pictures of vehicles to prove they were improperly parked before removing them from private property.³⁷

Rules Requiring Itemization of Invoices

Sixteen states require T&R companies to provide itemized invoices including all charges assessed (Table 3). As stated previously, itemized invoices can help motor carriers, insurance companies, and reputable T&R companies reach a mutual understanding of services performed, helping to streamline the process of payment and vehicle retrieval. Itemization also makes it more difficult for predatory T&R companies to include excessive rates or unwarranted services, as the additional costs would have to be justified.

Some states, such as Virginia, require T&R companies to keep itemized records but do not require that submitted invoices include such itemization. Other states, such as Idaho and South Carolina, only require that T&R companies provide an itemized receipt after an invoice has been paid rather than an itemized invoice prior to payment. These regulations are less desirable because they only allow motor carriers to understand charges and identify potential irregularities after paying the invoice or after filing a complaint.

Motor Carrier Complaint Processes for Predatory Towing Practices

Another important topic of state regulation is complaint and resolution processes for nonconsensual towing. Seventeen states had centralized complaint processes for nonconsensual police towing conducted at the statewide level either by the state police or by the same regulatory body that handled towing licensing and/or rates. Where statewide complaint processes were absent, victims of predatory towing were directed to file any disputes either with the specific police division that initiated the tow, the state's Attorney General's office, or the local courts where the towing took place.

Experts with experience in T&R disputes with motor carriers emphasize the importance of having centralized channels or clear processes for specifically dealing with T&R complaints because these can promote more efficient, informed and fair resolutions.³⁸ By contrast, outside court systems or Attorneys General offices may move more slowly and have less institutional knowledge of the industry. The fact that three of the states with the highest proportion of predatory towing incidents have centralized complaint processes (Texas, Massachusetts, and Washington) nonetheless indicates that the regulations should clearly define such processes to ensure that they produce the intended benefits.

Arkansas, for example, has a self-regulating T&R recovery board composed of members of the T&R industry with vested interest in its fair operation, and this board is tasked with resolving complaints within forty-five days.³⁹ In Tennessee, complaints are still handled within the Troop Division that ordered the tow, but a District Wrecker Lieutenant is assigned to investigate any complaints regarding tows initiated by Tennessee Highway Patrol.⁴⁰ Alabama's complaint

³⁷ Colorado, Maryland, Nevada, New Mexico, Ohio, and Oregon. Full Compendium.

³⁸ Mike Matousek, "Are towing companies open to reform?," *Land Line Media* (November 2, 2022), <https://landline.media/podcast/are-towing-companies-open-to-reform/>.

³⁹ Arkansas Towing and Recovery Board, *Administrative Rules of the Arkansas Towing and Recovery Board*, Arkansas Department of Labor and Licensing (October 1, 2022), <https://www.artowing.arkansas.gov/wp-content/uploads/2022/11/ATRB-Rules-Clean-FINAL-092022.pdf>.

⁴⁰ Tennessee Highway Patrol, *Towing Service Manual*, Department of Safety and Homeland Security (January 2017), https://www.tn.gov/content/dam/tn/safety/documents/Towing_Service_Standards_Manual.pdf.

process is also conducted within the troop area where the towing took place. Once the complaint process is initiated, however, state regulations state that the towing company must cease levying any additional storage charges related to the vehicle, and the trooper commander must make a decision on the case within three days.⁴¹

Strategies and Perspectives from Legal Experts

Given the high frequency of predatory towing, it is imperative that motor carriers and insurers know how to work with their legal representatives to identify and address predatory towing situations.

ATRI conducted interviews with legal experts at two law firms that regularly address predatory towing. Rob Moseley (Founding Partner) and Martin E. Cain with Moseley Marcinak Law Group LLP specialize in trucking and transportation-related litigation. Adam J. Brand (Founder and Managing Partner) and Shahan Kapitanyan (Senior Associate) with Brand & Tapply, LLC specialize in insurance fraud.

Q: Have you noticed any recent trends in the landscape surrounding predatory towing or any change in the frequency of predatory towing cases?

BRAND and KAPITANYAN: Claims involving predatory towing are definitely on the rise. We are receiving assignments throughout the United States involving grossly inflated tow, recovery and remediation invoices. The frequency and amounts sought by T&R companies have dramatically increased during the past few years. Reasons for these increases include training provided to T&R companies aimed at increasing the amounts they can bill insurers, communication between T&R companies who have successfully recovered payment on inflated invoices, and a general understanding by the public that inflating a T&R claim or invoice is acceptable.

Q: How can motor carriers prepare for predatory towing?

MOSELEY and CAIN: Avoid a predatory towing company in the first place by contacting a local trucking association to find a preferred towing company that you can instruct law enforcement to call to an accident scene. Research the towing laws of the states in which your trucks regularly operate. Instruct drivers on how to take photos and videos of the accident scene, including the vehicle's exact position and any spill of oil, fuel, or cargo as well as the number of workers sent by the towing company, what they are doing at the scene, how long they remain on scene, and the amount and type of equipment used to tow the vehicle and clean up the scene (including wreckers, hazmat trucks and trailers, stick booms, skid-steers, track hoes, blowers, sweepers, dry mats, fill dirt).

Q: What are the most important things a motor carrier can do – or can instruct drivers to do – to mitigate predatory towing situations?

BRAND and KAPITANYAN: The commercial truck driver can be a key witness in predatory towing cases. Motor carriers should instruct their drivers to take note of when

⁴¹ Rules governing towing and recovery services; service charge dispute resolution process., *The Code of Alabama*, Title 41-27-61, <http://alisondb.legislature.state.al.us/alison/CodeOfAlabama/1975/Coatoc.htm>.

the tower arrives and departs from the scene, what equipment and the number of laborers used in the recovery and if outside resources participate in the tow/recovery, such as fire, department of public utilities or other outside vendors. Frequently, T&R companies request that drivers sign documents at the scene such as assignment of rights, agreements to rates, etc. There is no requirement that these be signed, and we would recommend your drivers be instructed not to sign any documents. Ultimately the driver will be able to serve as a witness to what transpired during the recovery and how long it took.

Q: How can predatory practices be identified on invoices?

MOSELEY and CAIN: Check all administrative fees, fuel surcharges, and sales taxes. Note the mileage from the scene to the tow yard. Review and compare photos and videos taken by drivers with invoices to identify any excessive or double billing for tasks, manpower, and equipment. Check if the T&R company has submitted per-pound pricing without knowing the weight of the vehicle and its components.

Q: What are the most important things a motor carrier and its legal representatives can do to address a predatory towing situation?

MOSELEY and CAIN: Contact your insurer so that it can negotiate with the T&R company or hire a law firm experienced in truck T&R issues to negotiate or send a demand letter. If negotiations are unsuccessful and you can't afford to pay the invoice under protest, file a lawsuit to seek a temporary injunction or a replevin action where you can post a bond and regain possession of your vehicle to stop storage costs. Bring claims for unjust enrichment, unfair trade practices, fraud, and conversion. Send a Freedom of Information Act (FOIA) Request to Highway Patrol/State Police and State Department of Transportation asking for any records regarding the T&R company's membership on law enforcement's rotation and any complaints filed against the towing company. (A sample FOIA is included as Appendix E.) As appropriate, file a complaint against the T&R company with Highway Patrol/State Police or the Attorney General for the state in question. It is critical to compare the costs that a T&R company has filed with the state's rotation list to the rates they charge on a predatory T&R invoice.

Q: What are the most important things an insurer can do to address a predatory towing situation?

BRAND and KAPITANYAN: Insurers need to have a process in place to respond quickly to predatory towing claims. This starts with having persons internally or externally that can review and evaluate an invoice for improper and/or inflated charges. Once a potentially predatory towing invoice is identified, the insurer needs to conduct due diligence to determine what services were provided and the duration of time expended on same. Such investigations can include requesting invoice clarification, copies of any sub-contractor's invoices, timecards for laborers, police reports and police logs. In addition, the duration of the recovery can also be checked against any available GPS/telematics data from the vehicles.

The insurer will then need to seek resolution of any disputes through negotiation or other legal means. The "quick response team" should include an expert to assess rates and recovery methods, a bonding company (in case a replevin bond must be filed to force

release of the equipment) and an attorney to assist with negotiations. If negotiations fail, the attorney will need to pursue legal strategies to force release of the equipment and alternative dispute resolution or litigation to resolve the dispute in accordance with the usual and customary charges for the recovery in question.

Q: What are some of the predatory towing tactics you see T&R companies use?

BRAND and KAPITANYAN: T&R companies are now using an array of tactics to improperly inflate tow and recovery charges. These include inflated rates for equipment and labor, surcharges for environmental conditions (poor weather, hazardous conditions etc.), administrative fees, charges for lights, headsets and chains – as if these were single-use items and not overhead costs. Often, unnecessary equipment is brought to a scene to add to the billable expenses. We have even seen special charges, referred to as "set up fees," to position rotators. These charges are in excess of the standard hourly rate for the rotator. Tactics also include delaying the claim process to extend the number of storage days being charged. This can be done by delaying the submission of the towing invoice, barring independent adjusters' access to the tow lot, requiring proof of insurance on the adjuster's part prior to entrance, and setting payment terms that are unreasonable. These measures are all aimed at inflating the invoice and increasing the storage fees.

Q: What is the most important regulatory information that motor carriers and their legal representatives should know when handling a predatory towing situation?

MOSELEY and CAIN: Many states require Highway Patrol/State Police to use a T&R company requested by the motor carrier, subject to certain limitations. Some states require towing fees to be "reasonable" for the services rendered, meaning they must be equivalent to fees charged on non-rotation calls for similar services. In some states, fees have to be approved by the Highway Patrol/State Police. Some states provide that mileage fees can only be charged if the motor carrier requests the vehicle be towed to an area outside the wrecker's designated zone. Vehicles to be removed from private property generally require a written request/posted notice from the private property owner warning that vehicles are subject to tow. Notice must generally be given to a vehicle owner prior to a lien sale or public auction.

CONCLUSIONS

Predatory towing has received increased attention from the trucking industry in recent years, as nonconsensual tows often create costly consequences for motor carriers and insurance companies as well as negative impacts to supply chains. Because most heavy-duty truck crash scenarios are unique, they present trucking and T&R stakeholders a series of complex tasks, decisions, regulations and interactions that can easily enable predatory practices. This research focused on identifying the causes of predatory towing and countermeasures to prevent it.

Excessive rates and unwarranted additional service charges were the two most common forms of predatory towing, experienced by 82.7 and 81.8 percent of motor carriers, respectively. Excessive daily storage rate, vehicle release delays or access issues, and cargo release delays are also frequent, though these issues often accompany payment-related issues.

Based on a comprehensive analysis of truck crash-related towing records, 29.8 percent of invoices were found to include either excessive rates or excessive additional charges. Approximately one half of these predatory cases had excessive rates for equipment, labor, or storage; the other half of these cases had excessive miscellaneous or administrative charges. Table 4 summarizes national median and excessive rates for each analyzed service charge.

Table 4: Summary of Median Rates and Excessive Rate Thresholds

Service Charge	Median Rate	Excessive Rate
Heavy-Duty Wrecker	\$582/hour	\$873/hour
Heavy-Duty Rotator	\$1,137/hour	\$1,705.50/hour
Rollback	\$270/hour	\$405/hour
Heavy-Duty Towing	\$291/hour	\$436.50/hour
Extra Labor	\$105/hour	\$157.50/hour
Supervisor Labor	\$195/hour	\$292.50/hour
Storage	\$120/day	\$240/day
Administrative Fees (Percent of Subtotal Bill)	5.1% of Subtotal	10.2% of Subtotal
Miscellaneous Expenses (Percent of Pre-Tax Bill)	12.6% of Pre-Tax Total	25.2% of Pre-Tax Total

The effectiveness of T&R regulation depends on the clarity and applicability of regulatory language. Carriers can encounter difficulty seeking cargo release or a choice of their preferred T&R company in states where regulations encourage but do not require these rights. Similarly, rate regulations that only apply to one T&R equipment type leave loopholes for predatory rates in other equipment types or miscellaneous charges.

The findings of this study – supported by T&R data analysis as well as interviews with T&R companies, motor carriers, lawyers, and insurers – identified multiple strategies for mitigating

the predatory towing problem. Recommendations for addressing the primary forms of predatory towing are described in Table 5.

Table 5: Conclusions

Predatory Towing Issue	Recommendation
<p><i>Excessive Hourly or Per-Pound Rates</i></p>	<p>T&R invoices should be itemized to prevent confusion and the need for contesting bills.</p>
	<p>Carriers should review T&R invoices for rates higher than the excessive thresholds summarized in Table 4.</p>
	<p>States should create centralized conflict resolution channels to resolve any towing rate issues without relying on local courts or Attorneys General Offices.</p>
	<p>Sources that should be consulted when responding to excessive rates include:</p> <ul style="list-style-type: none"> • police logs and reports; • actual vs billed mileage between crash scenes and tow yards; • state or municipal regulations; • previous rates charged by the same T&R company; • rates charged by other T&R companies in the area; and • GPS data from the crashed vehicle.
	<p>Motor carriers should form business relationships with local T&R companies where they operate regularly to facilitate informed motor carrier choice and promote reliable T&R companies.</p>
	<p>State regulations should promote motor carrier choice of their preferred T&R company whenever possible. Regulatory language should explicitly define crash site conditions in which this choice is applicable.</p>

<i>Vehicle Seizure without Cause</i>	State regulations should prevent private property tows without the property owner’s consent.
	Businesses that cater to commercial drivers, such as truck stops, should take steps to prevent T&R companies from seizing vehicles without consent.
<i>Unwarranted Additional Equipment or Labor Charges</i>	Truck drivers need to photograph the crash site, crashed vehicle(s), and recovery process to disprove any misreported invoices.
	Additional training for drivers, police, and public safety dispatchers on how to report and manage heavy-duty crashes will help prevent over-deployment.
	Invoices should be reviewed for redundant charges, such as set-up, administrative, and hourly charges for the same equipment.
	Invoices should be reviewed for charges for large numbers of durable items that are typically overhead costs, such as radios, lights, or saws.
<i>Vehicle Release Delays or Access Issues and Cargo Release Delays</i>	Motor carriers should ensure adequate auto liability, cargo, and physical damage insurance coverage – preferably with the same insurer – and be aware of any towing-related limits.
	States should expressly mandate cargo release. If not, they should at least include clear language in their laws regarding any liens that T&R companies have on cargo.
	To regain vehicle possession and stop mounting storage costs, motor carriers should file a replevin bond.

<p><i>Tow Operators Misreporting Nonconsensual Tows as Consensual</i></p>	<p>Truck drivers should never sign consent forms during a police-initiated tow, as these could reclassify a nonconsensual tow as consensual and thus potentially exempt it from regulation.</p>
	<p>State regulations should protect truck drivers from predatory towing by banning solicitation at crashed/disabled vehicle sites.</p>
<p><i>Damage Due to Use of Improper Towing Equipment</i></p>	<p>Drivers should take photographs or videos of the crash site, crashed vehicle(s), and recovery process to document any improper handling.</p>

Roadway safety and a viable trucking industry depend on a robust, reliable T&R industry. More expansive, detailed and transparent communication between trucking, towing and insurance is important to prevent misunderstandings on towing processes, specific invoices or the challenges of towing heavy-duty vehicles in general from escalating into more serious conflicts. Nonetheless, as this report documents, predatory towing is a serious problem that will require cooperative efforts of all three industries as well as government.

APPENDIX A: State by State Compendium of Towing Regulations

To view the full state-by-state compendium of towing regulations compiled and analyzed as part of this research, visit [ATRI's website here](#).

APPENDIX B: Motor Carrier Survey



Quantifying Industry Impacts from Predatory Towing

The American Transportation Research Institute (ATRI), the trucking industry’s not-for-profit research organization, is studying the impact of predatory towing in the trucking industry. Predatory towing is any incident in which a tow truck operator egregiously overcharges, illegally seizes, damages by use of improper equipment, or withholds release of a truck and/or cargo. ATRI’s Research Advisory Committee (RAC) identified the need to better understand this problem as a top industry priority early this year. This survey seeks driver and motor carrier input on the frequency, types, and scope of predatory towing.

The data collected will be kept completely **confidential**. The final report will only be presented in an aggregated, non-identifying format.

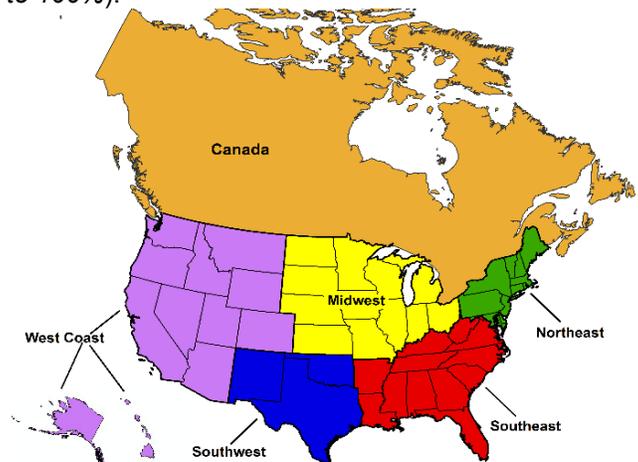
1. What is your role in trucking?
 - Company driver
 - Owner operator / Independent contractor
 - Motor carrier management

2. In what sector do you primarily work?
 - Truckload
 - Less-than-Truckload
 - Flatbed
 - Tanker – Petroleum/Hazmat
 - Tanker – Non-Hazmat
 - Oversize/Overweight
 - Intermodal
 - Express/Parcel
 - Private carrier

3. How many trucks are in your fleet?

4. Please estimate the percentage of miles traveled by your fleet (include IC/Owner-Operator miles) in the following regions during 2021 (*total must sum to 100%*).

Region	% of Total Miles
Midwest	
Northeast	
Southeast	
Southwest	
West	
Canada	
Total	100%



5. What percentage of your trips were in the following categories in 2021? (Total must sum to 100%)
 - ___ Local pickups and deliveries (less than 100 miles)
 - ___ Regional pickups and deliveries (100 – 500 miles)
 - ___ Inter-regional pickups and deliveries (500 – 1,000 miles)
 - ___ National pickups and deliveries (1,000+ miles)

6. Please rank which predatory towing practices have had the most impact on you, with 1 indicating the most frequent. Do not rank any predatory towing practices that you have not encountered.
 - ___ Excessive hourly or per-pound rates
 - ___ Unwarranted additional equipment or labor charges
 - ___ Excessive daily storage rate
 - ___ Vehicle release delays or access issues
 - ___ Cargo release delays
 - ___ Vehicle seizure without cause
 - ___ Tow operators misreporting (ex., “non-consent” tows as “consent”)
 - ___ Damage due to use of improper towing equipment
 - ___ Other: _____

7. At what dollar amount would you consider a tow company’s hourly rate excessive for a heavy-duty wrecker / rotator for a Class 8 truck?
 - Anything greater than \$_____ per hour

8. After how many days would you consider vehicle or cargo release delayed?
 - Anything longer than _____ days

9. Please write the states in which you have had a predatory towing incident, the number of incidents, and an estimated percentage of your average annual mileage spent in that state in 2021.

State	# of Predatory Towing Incidents	% of Annual Mileage Spent

10. Please provide your contact information below. Occasionally ATRI will follow up with participants to clarify answers. Your information will be kept strictly confidential. All participants will receive an advance copy of the full report.
 - Contact name: _____
 - Company: _____
 - Email address: _____

The next phase of this research is to collect more detailed information on towing records directly from carriers. This data will be essential to quantify the frequency and severity of predatory towing events in comparison with ordinary towing events. ATRI is seeking carriers to provide invoices for each of their towing records from the years 2021 and 2022 (as well as information about any additional delays or damage).

11. Would you be willing to share this data from 2021 and 2022? Y/N

Thank you! We greatly appreciate your contribution to ATRI’s research.

For questions or additional information, contact Alex Leslie:
 Email: aleslie@trucking.org Fax: 651-631-9500

APPENDIX C: T&R Company Interview Guide



The American Transportation Research Institute (ATRI), the trucking industry's not-for-profit research organization, is studying the impact of predatory towing in the trucking industry. Because trucking considers towing a partner industry, ATRI's Research Advisory Committee (RAC) identified the need to better understand this subject as a top priority. The trucking industry considers overcharging, delayed equipment release, or unnecessary towing as potentially predatory practices.

Recognizing that the majority of towing companies do not engage in predatory practices, ATRI seeks to interview towing companies in order to ensure an unbiased report, represent towing perspectives, and identify areas for improved communication and partnership. All responses will be confidential.

1. Based on your knowledge of the industry, what do you consider a generally accepted rate for a heavy-duty wrecker / rotator for a Class 8 truck?
Heavy-duty wrecker: between \$ ____ and \$ ____ per hour
Rotator: between \$ ____ and \$ ____ per hour
2. What would you consider a generally accepted delay for vehicle or cargo release?
Anything less than ____ days
3. What is your perspective on per-mile billing as opposed to per-hour billing?
4. How often do trucking companies contest invoices?
5. One source of issues identified by the trucking industry is the use of police rotation lists for assigning towing companies. What is your perspective on rotation list procedures, and do you have any suggestions for improving them?
6. Some trucking companies report instances of being charged for more equipment or additional services than they believe necessary. Could you describe your process for deciding what resources to use when responding to a crash? Are there industry guidelines or minimum requirements for responding to large commercial vehicle incidents?
7. What are the biggest issues that can arise when towing companies and trucking companies do business?
8. What steps do towing companies take to promote communication and transparency with the trucking fleets with which they do business?
9. What do you think trucking companies need to understand about the towing industry?

APPENDIX D: Insurance Survey



Insurance Industry Experience with Predatory Towing

The American Transportation Research Institute (ATRI), the trucking industry's not-for-profit research organization, is researching the impact of predatory towing on the trucking industry. Previous phases of this research included a motor carrier survey, towing company interviews, and towing invoice analyses.

ATRI is now seeking feedback from the commercial auto insurance sector on its experiences with towing.

ATRI would greatly appreciate your responses to the questions below, with as close an estimate as possible. All responses to this survey will be kept **strictly confidential** and will only be reported as summary statistics.

1. What percent of motor carrier insurance policies include towing coverage?

___ %

2. Are there any circumstances that impact whether, or to what extent, a towing bill (inclusive of recovery, tow, cleanup, etc.) is covered by an insurance policy?

3. *Among carriers whose insurance policies include towing coverage*, what percent of towing bills do insurers pay on average?

___ %

4. *Among carriers whose insurance policies include towing coverage*, what percent of towing invoices exceed motor carriers' deductibles?

___ %

5. What is the average reimbursement in dollars that you pay for towing charges?

\$ _____

6. What percent of towing invoices do insurance companies contest with towing companies?

___ %

7. When insurance companies contest towing invoices, what percent of invoices do towing companies ultimately revise lower?

___ %

APPENDIX E: Sample Freedom of Information Act Request



MOSELEY
MARCINAK
LAW GROUP

Martin E. Cain
Direct Dial: 864.254.7611
Email: Martin.Cain@momarlaw.com

October 30, 2023

VIA FACSIMILE AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED

State Law Enforcement Agency and State Department of Transportation
Records Division

Re: FOIA Request

Dear State Law Enforcement Agency and State Department of Transportation:

Please allow this letter to serve as our firm's Freedom of Information Act (FOIA) request for the following information:

1. All documents, witness statements, photographs, videos, dash camera videos, or body camera videos in your possession and related to a motor vehicle accident that occurred on October 30, 2023, on I-100 near City, State. The accident involved a vehicle owned by Trucking Company.
2. All records of Predatory Towing Company being dispatched by law enforcement to perform towing services pursuant to Random State Police's towing rotational list within the past 3 years.
3. All records of Predatory Towing Company applying for membership on Random State Police's towing rotational list.
4. All files that your office maintains on or for Predatory Towing Company.
5. All complaints that your office has received related to Predatory Towing Company.
6. All manuals, policies, or guidelines that govern companies on Random State Police's towing rotational list.

Please contact me if copying costs will exceed \$100.00. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

Martin E. Cain



Atlanta, GA • Minneapolis, MN • Washington, DC • Sacramento, CA
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TruckingResearch.org